

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





842

75-7062

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**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

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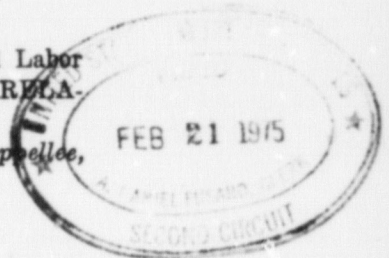
SIDNEY DANIELSON, Regional Director, Region 2 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

*Petitioner-Appellee,*

v.

INTERNATIONAL ORGANIZATION OF MASTERS,  
MATES AND PILOTS, AFL-CIO,

*Respondent-Appellant.*



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**JOINT APPENDIX**

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National Labor Relations Board  
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202-254-9439

*Attorney for Appellee*

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212 MO 1-1230

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Burton M. Epstein  
Martin Markson

PAGINATION AS IN ORIGINAL COPY



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Transcript of Proceedings in the District Court, as follows:	

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Charles J. Hess	
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Cross (by Charging Party)	21
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CIVIL DOCKET  
UNITED STATES DISTRICT COURT

1a

Jury demand date:

JUL 1 MOTLEY

84 07 5254

2. Form No. 108 Rev.

TITLE OF CASE	ATTORNEYS
SIDNEY DANIELSON, REGIONAL DIRECTOR, REGION 2 OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,	For plaintiff: MICHAEL S. LONDON NATIONAL LABOR RELATIONS BOARD, 26 FEDERAL PLAZA, N.Y.C. 10007 264- 0300
VS.	
INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS AFL-CIO	For defendant: WALDMAN & WALDMAN 501 Fifth Ave-NYC 10017 (MO 1-1230)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISP.
3. 5 mailed <b>X</b>	Clerk	7/7/71	6-11-71		
3. 6 mailed	Marshal				
asis of Action:	Docket fee				
'IONAL LABOR RELATIONS ACT.	Witness fees				
tion arose at:	Depositions				



SIDNEY DANIELSON, ETC VS INTERNATIONAL ORGANIZATION OF MASTERS ETC.

34 W. 5254

12-1

DATE	PROCEEDINGS	Date Order of Judgment Note
Dec 2-74	Filed Petition for Injunction under Sec 10 (1) of the NLRB. AS amended.	
Dec 3-74	Filed Petitioner's affdvt. and Order to Show Cause for temporary injunction. Ret. 12-6-74 at 2:00 p.m. MOTLEY, J.	
Dec 6-74	Filed ANSWER of respondent to petition	W&W
Dec 10-74	Filed memo endorsed on unsigned order to show cause. The within application for an order to show cause is denied. Opinion follows. So ordered- MOTLEY, J. (m/n)	
Dec 11-74	Filed Opinion # 41560- For the reasons indicated- petitioner's motion for a preliminary relief is granted. Submit order on three days' notice. MOTLEY, J. (m/n)	
Dec 20-74	Filed Order granting Temporary Injunction- ordered that respondent, its officers, etc. and all members and persons acting in concert or participation with it or them pending the final disposition of the matters involved herein pending before the Board, be and they hereby are, enjoined and restrained from seeking arbitration or in any other manner maintaining, etc. or enforcing the collective bargaining agreement between the International Organization of Masters, Mates and Pilots, AFL-CIO and Seatrain Lines, Inc. effective for the term 6-16-72 through 6-15-75 insofar as the contract provides at section V(2) as indicated. MOTLEY, J. (m/n)	
Dec 17-75	Filed respondent's notice of appeal from order filed 12-20-74 and from an order filed 1-16-75. Copies to: Peter G. Wash, Esq. and Surrey, Karasik, Morse & Schen	
Jan 17-75	Filed memo endorsed on unsigned order to show cause. The within application for an order to show cause is denied. The motion to reargue or alternatively to stay the court's order of 12-19-74 are denied. So ordered- MOTLEY, J.	
Dec 20-75	Filed transcript of record of proceedings, dated Dec. 6, 9, 1974	

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

\*\*\*\*\*

SIDNEY DANIELSON, Regional Director,  
Region 2 of the National Labor  
Relations Board, for and on behalf of  
the NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

74 Civil

INTERNATIONAL ORGANIZATION OF  
MASTERS, MATES AND PILOTS, AFL-CIO

Respondent..

\*\*\*\*\*

PETITION FOR INJUNCTION UNDER SECTION 10(1)  
OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

To the Honorable, the Judges of the United States District Court  
for the Southern District of New York:

Comes now Sidney Danielson, Regional Director, Region 2, of the  
National Labor Relations Board (herein called the Board), and petitions this  
Court for and on behalf of the Board, pursuant to Section 10(1) of the National  
Labor Relations Act, as amended, (61 Stat. 149; 73 Stat. 544; 29 U.S.C., Sec.  
160(1); herein called the Act, for appropriate injunctive relief pending the  
final disposition of the matters involved herein pending before the Board  
on a charge alleging that respondent has engaged in, and is engaging in a  
violation of Section 8(e) of the Act. In support thereof, petitioner  
respectfully shows as follows:

1. Petitioner is Regional Director, Region 2, of the Board,  
an agency of the United States Government, and files this petition for and on  
behalf of the Board.
2. Jurisdiction of this Court is invoked pursuant to Section 10(1)  
of the Act.
3. On October 1, 1974, Seatrain Lines, Inc., (herein Seatrain),  
pursuant to provisions of the Act, filed a charge alleging, that respondent,  
International Organization of Masters, Mates and Pilots, AFL-CIO (herein MM&P),  
a labor organization, has engaged in, and is engaging in, an unfair labor  
practice within the meaning of Section 8(e) of the Act. A copy of said charge  
is attached hereto as Exhibit 1 and made a part hereof.



4. The aforesaid charge was referred to petitioner as Regional Director, Region 2, of the Board.

5. Upon the basis of the following, petitioner has reasonable cause to believe that said charge is true and that a complaint of the Board based thereon should issue against respondent pursuant to Section 10(b) of the Act. More particularly, petitioner has reasonable cause to believe, and believes that respondent, ILM&P, is a labor organization within the meaning of Sections 2(5), 8(e) and 10(1) of the Act, and that said respondent has engaged in, and is engaging in, a violation of Section 3(e) of the Act, affecting commerce within the meaning of Sections 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent maintains its principal office at 39 Broadway, New York, New York 10006; and at all times material herein, has been engaged within this judicial district in transacting business and in promoting and protecting the interests of its employee members.

(c) Seatrain, a Delaware corporation with an office located at One Chase Manhattan Plaza, New York, owns and operates seagoing vessels which are engaged, inter alia, in the transportation of goods and commodities in interstate and foreign commerce. Seatrain derives annual gross revenues from said operations in excess of one million dollars.

(d) At all times material herein, Seatrain Shipbuilding Corp., (herein Seatrain Shipbuilding) has been a wholly owned subsidiary corporation of Seatrain engaged in the business of constructing and selling ships.

(e) In the course of its operations, Seatrain Shipbuilding has constructed a supertanker called the T/T Brooklyn and currently is completing the construction of another supertanker, the T/T Williamsburg.

(f) At all times material herein Seatrain has employed licensed deck officers who are members of or represented by ILM&P and Seatrain, has at all times material herein, recognized ILM&P as the collective bargaining representative of such employees.

(g) Seatrain and ILM&P are parties to a collective bargaining agreement



covering the employees of Seatrain described above in subparagraph (f). The most recent collective bargaining agreement between the parties is effective for the period from June 16, 1972 through June 15, 1975.

(h) The collective bargaining agreement described above in subparagraph (g) contains the following provisions:

Preamble:

"with respect to any U.S. - flag ocean-going vessel which [the signatory company or its subsidiaries or affiliates] either own or operate as an agent or under bareboat charter, and as further described in this Agreement."

"SECTION V. VESSELS BOUND BY THE AGREEMENT

1. Coverage of the Agreement

a. Vessel Coverage. This Agreement covers the Licensed Deck Officers employed on ocean-going U.S. - flag vessels, owned, operated or bareboat chartered (both at present or at any time during the life of this Agreement) by the Company or any of its subsidiaries or affiliates (whether so at present or at any time during the life of this Agreement) as an owner, agent, operator or bareboat charterer.

b. Subsidiary and Affiliate. The term 'subsidiary' or 'affiliate' shall be deemed to include any business entity whether corporate, partnership, trust, individual, or otherwise, which is effectively controlled by or effectively controls the Company either directly or indirectly.

2. Sales and Transfers

a. With regard to any sale, charter (but not including a vessel which the Company may be operating under a bareboat charter and the charter is terminated) or any manner of transfer (except sales to foreign flag) of the Company's vessel:

i. At least seventy-two (72) hours prior to the date of the effective transfer of the vessel, written notice must be given to the Organization by the Company.

ii. The execution by the purchaser, charterer or transferee of the Organization's collective bargaining agreement shall be a condition precedent to any sale, charter or transfer.

iii. If the Company violates subsection 2(a)(ii) above, the Arbitrator may include as part of his award, loss of wages and contributions to the various Organization Plans.

iv. A violation of subsection 2(a)(ii) above shall also permit the Organization to cancel the no-strike provisions of this Agreement."

(i) On or about December 31, 1973 Seatrain Shipbuilding sold the T/T Brooklyn to Wilmington Trust Company (herein called Wilmington).

(j) Upon the purchase of the T/T Brooklyn, Wilmington chartered such vessel, without crew, (bareboat charter), to the East River Steamship Corporation, (herein called East River). East River thereupon subcontracted the manning of the vessel with licensed officers and other personnel to Westchester Marine Shipping Company, (herein called Westchester).

(k) At all times material herein, Westchester has employed licensed officers who are members of or represented by the Marine Engineers Beneficial Association, (herein called MEBA), and at all times material herein has been a party to a collective bargaining agreement with MEBA as the bargaining representative of the licensed officers employed by Westchester.

(l) On or about September 5, 1974, General Electric Credit Corporation (herein called GECC) arranged to buy the T/T Williamsburg from Seatrain Shipbuilding.

(m) GECC in turn, bareboat chartered the T/T Williamsburg to Kingsway Tankers, (herein called Kingsway).

(n) On or about April 17, 1974 MEAP filed for arbitration against Seatrain, pursuant to the terms of its collective bargaining agreement with Seatrain, protesting the failure to man the T/T Brooklyn with licensed deck officers who are members of or represented by MEAP.

(o) On or about September 18, 1974, MEAP filed for arbitration against Seatrain, pursuant to the terms of its collective bargaining agreement with Seatrain, protesting the failure to man the T/T Williamsburg with licensed deck officers who are members of or represented by MEAP.

(p) At all times since April 18, 1974 MEAP has demanded and insisted that Seatrain refrain from selling or transferring ownership of the T/T Brooklyn and the T/T Williamsburg to any persons unless such persons enter into collective bargaining agreements with MEAP.

(q) On or about April 22, 1974 Seatrain commenced an action against MEAP in the Supreme Court of the State of New York seeking to stay the arbitration sought by MEAP as described above in subparagraph (n). On April 23, 1974, that court granted a temporary restraining order against MEAP.

(r) Subsequent to April 23, 1974, the law suit described above in subparagraph (q) was removed to the United States District Court, for the Southern District of New York, in a case entitled Seatrain Lines Inc. v.



International Organization of Masters, Mates and Pilots, AFL-CIO etc. 74 Civil 1983, which case is currently pending before Judge Constance Baker Motley. That case was amended to also request a stay of arbitration regarding the grievance filed against Seatrain by IMMP, concerning the sale or transfer of the T/T Williamsburg.

(s) By the acts and conduct described above in subparagraphs (o) and (p), IMMP reaffirmed the agreement with Seatrain described above in subparagraph (h) in violation of Section 8(e) of the Act.

6. It may fairly be anticipated that, unless enjoined, respondent will continue to seek to enforce and give effect to the contract clauses referred to in paragraph 5, subparagraph (h) above, or enter into a similar or like contract clause or agreement in violation of Section 8(e) of the Act. It is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(1) thereof, that, pending final disposition of the matters involved herein pending before the Board, respondent be enjoined and restrained from maintaining, enforcing giving effect to or otherwise entering into the contract clause referred to in paragraph 5, subparagraph (h) above, and from entering into any other similar contract clause or agreement.

7. No previous application has been made for the relief sought herein. However, as a motion for preliminary injunction is pending before Judge Constance Baker Motley in 74 Civil 1983 involving the same parties and substantially similar issues, it is respectfully requested that the Order to Show Cause and Petition herein be referred to Judge Motley so as to avoid any possibility of an order issuing in this case which, if this petition be granted, would conflict with any order or disposition by Judge Motley in the matter now pending before her.

WHEREFORE, Petitioner prays:

1. That the Court issue an order directing respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it, pending the final disposition of the matters involved herein pending before the Board, from:

(a) Maintaining, giving effect to or enforcing the collective bargaining agreement between M&P and Seatrain effective for the term June 16, 1972 through June 15, 1975, as reaffirmed by M&P in April and September 1974, insofar as the contract provides at Section V,2, that:

**Sales and Transfers**

a. With regard to any sale, charter (but not including a vessel which the Company may be operating under a bareboat charter and the charter is terminated) or any manner of transfer (except sales to foreign flag) of the Company's vessel:

i. At least seventy-two (72) hours prior to the date of the effective transfer of the vessel, written notice must be given [sic] to the Organization by the Company.

ii. The execution by the purchaser, charterer or transferee of the Organization's collective bargaining agreement shall be a condition precedent to any sale, charter or transfer.

iii. If the Company violates subsection 2(a)(ii) above, the Arbitrator may include as part of his award, loss of wages and contributions to the various Organization Plans.

iv. A violation of subsection 2(a)(ii) above shall also permit the Organization to cancel the no-strike provisions of this Agreement.

(b) Entering into, maintaining, giving effect to, or enforcing any other contract or agreement, express or implied, whereby respondent M&P, requires Seatrain or any other persons to cease or refrain or agree to cease or refrain from handling, using, selling, transporting, or otherwise dealing in the products of any other employer, or from doing business with any other person.

2. That upon the return of the said order to show cause, the Court issue an order enjoining and restraining respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper.

Dated at New York, New York this 2nd day of December 1974.

*Sidney Danielson*  
 \_\_\_\_\_  
 Sidney Danielson, Regional Director  
 Region 2  
 National Labor Relations Board

PETER G. WASH, General Counsel

JOHN S. IRVING, Deputy General Counsel

GERALD BRISSMAN, Associate General Counsel

WINIFRED D. MORIO, Regional Attorney

MICHAEL S. LONDON, Attorney

National Labor Relations Board, Region 2  
 26 Federal Plaza, Room 3614  
 New York, N.Y. 10007, 264-0300



FORM NLRB-504  
(12-63)Form Approved  
Budget Bureau No. 64-B003.12UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

2-CE-68  
10/1/74

## I. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name

International Organization of Masters  
Mates & Pilots

b. Union Representative to Contact

Marvin Schwartz, Esq.

c. Phone No.  
(212)

691-2250

d. Address (Street, city, State and ZIP code)

39 Broadway, New York, New York 10006

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since in or about June 1972 and thereafter, the above-named labor organization, engaged in an industry affecting commerce, entered into a contract or agreement in writing with Hudson Waterways Corporation, a wholly owned subsidiary of the below-named employer, covering "dry cargo" vessels owned or operated by it "or any of its subsidiaries or affiliates" and containing, inter alia, a provision requiring the employer to cease or refrain from doing business with any other person, to wit, selling, chartering or transferring a vessel unless the purchaser, charterer or transferee thereof agrees to execute the collective bargaining agreement of the above-named labor organization as a condition precedent to any sale, charter or transfer.

On or about December 31, 1973, Seatrain Shipbuilding Corp., a wholly owned subsidiary of the below-named employer, engaged exclusively in the business of constructing and selling ocean-going vessels, sold the newly constructed vessel T/T Brooklyn to independent unrelated purchasers. Thereafter, the T/T Brooklyn was manned by licensed deck officers employed by a company unrelated to the charging party and represented by a labor organization other than the above-named labor organization. (Continued... see Rider, attached)

3. Name of Employer

Seatrain Lines, Inc.

4. Location of Plant Involved (Street, city, State and ZIP code)

One Chase Manhattan Plaza, New York, New York 10005

5. Type of Establishment (Factory, mine, wholesaler, etc.)

Maritime

6. Identify Principal Product or Service

Shipping

7. No. of Workers Employed

Unknown

8. Full Name of Party Filing Charge

Surrey, Karasik, Morse and Seham

9. Address of Party Filing Charge (Street, city, State and ZIP code)

500 Fifth Avenue, New York, New York 10036

10. Telephone No.  
(212)

239-7200

## II. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.  
Surrey, Karasik, Morse and Seham

By

(Signature of representative or person making charge)  
Martin C. Seham

Attorneys

(Title or office, if any)

Address 500 5th Ave., NY, NY 10036

(212) 239-7200  
(Telephone number)October 1, 1974  
(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 855-486

Exhibit I

RIDER TO  
CHARGE AGAINST INTERNATIONAL ORGANIZATION  
OF MASTERS, MATES & PILOTS

Dated October 1, 1974

On or about April 17, 1974, the above-named labor organization sought to give effect to, maintain and enforce the illegal provisions of its collective bargaining agreement, as aforesaid, by demanding arbitration concerning the failure of the below-named employer to man the T/T Brooklyn with licensed deck officers represented by the above-named labor organization.

On or about September 18, 1974, the above-named labor organization again sought to give effect to, maintain and enforce the illegal provisions of its collective bargaining agreement, as aforesaid, by demanding arbitration concerning the failure of the below-named employer to secure the manning of the T/T Williamsburgh, a vessel presently nearing completion of construction by Seatrain Shipbuilding Corp., with licensed deck officers represented by the above-named labor organization and seeking such manning.

By these and other acts, the above-named labor organization has violated Section 8(e) of the Act by entering into a contract or agreement whereby the below-named employer is compelled to cease doing business with any other person and specifically selling or transferring its vessels only to certain persons, as aforesaid, and by enforcing the illegal agreement in arbitration and judicial proceedings.



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----  
SIDNEY DANIELSON, Regional Director,  
Region 2 of the National Labor Relations  
Board, for and on behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner,

ANSWER

74 Civ. 5254

v.

INTERNATIONAL ORGANIZATION OF MASTERS,  
MATES AND PILOTS, AFL-CIO,

Respondent.

-----

International Organization of Masters, Mates and  
Pilots, AFL-CIO (herein "Organization"), respondent, as and  
for its answer to the petition of the above-named petitioner,  
dated December 2, 1974, by said respondent's attorneys,  
Waldman & Waldman, sets forth and alleges as follows:

1. Denies knowledge or information sufficient to  
form a belief with respect to each and every allegation set  
forth in Paragraph 1 of said petition except admits that the  
petitioner is the Regional Director of the Second Region of  
the National Labor Relations Board, an agency of the United  
States Government.

2. Denies knowledge or information sufficient to  
form a belief with respect to each and every allegation set  
forth in Paragraphs numbered 2 and 4 of said petition.

3. Denies knowledge or information sufficient to  
form a belief with respect to each and every allegation set  
forth in Paragraph 3 of said petition, except admits that  
Seatrains Lines, Inc. (herein "Seatrains") on or about October  
1, 1974 filed a charge, a purported copy of which is designa-  
ted by the petitioner as Exhibit 1 and attached to the said

petition. Respondent Organization denies said charge.

4. Denies each and every allegation set forth in Paragraph 5 of said petition.

5. Denies each and every allegation set forth in Paragraph 5(a) of said petition, except admits that respondent Organization is divided into five Divisions, only one of which, the Offshore Division, is involved herein, and said Offshore Division is an organization in which supervisors only, but no employees, participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages and salaries, rates of pay, hours of employment, or conditions of work of such supervisors,

6. Denies each and every allegation set forth in Paragraph 5(b) of said petition, except admits that the Organization maintains its principal office at No. 39 Broadway, New York, New York.

7. Denies knowledge or information sufficient to form a belief with respect to each and every allegation of Paragraph 5(c) of said petition, except admits upon information and belief that Seatrain is a foreign corporation, with an office located at No. 1 Chase Manhattan Plaza, New York, New York, and that Seatrain owns and operates ocean-going vessels which are engaged in the transportation of goods and commodities in interstate and foreign commerce.

8. Denies upon information and belief each and every allegation set forth in Paragraph 5(d) of said petition except admits upon information and belief that Seatrain Shipbuilding Corp. (herein "Seatrain Shipbuilding") is a wholly owned subsidiary corporation of Seatrain.

9. Denies knowledge or information sufficient to form a belief with respect to each and every allegation



set forth in Paragraph 5(e) of said petition.

10. Denies each and every allegation set forth in Paragraph 5(f) of said petition, except admits that Seatrain has employed various supervisors, on its United States flag ocean-going vessels, including licensed deck officers, who are members of the Offshore Division of the Organization, and said Offshore Division bargains with Seatrain on behalf of said licensed deck officers and Seatrain has for many years recognized the Organization's Offshore Division and its predecessor subdivisions as the sole bargaining representative of all of Seatrain's supervisors who are licensed deck officers.

11. Denies each and every allegation set forth in Paragraphs 5(g) and 5(h) of said petition, except admits that Seatrain has negotiated and made with the Offshore Division, but in the Organization's name, agreements covering the supervisory licensed deck officers of Seatrain, its subsidiaries or affiliates, and that the most recent such agreement is effective for the period June 16, 1972 to June 15, 1975, and admits further that the substantive matter quoted in Paragraph 5(h) of the petition is extracted from the text of said 1972-75 agreement.

12. Denies knowledge or information sufficient to form a belief with respect to each and every allegation set forth in Paragraphs 5(i), 5(j) and 5(k), except admits upon information and belief that in or about December, 1973, Seatrain Shipbuilding purportedly transferred title of the T/T Brooklyn to Wilmington Trust Company.

13. Denies knowledge or information sufficient to form a belief with respect to each and every allegation set forth in Paragraphs 5(l) and 5(m) of said petition, except

admits upon information and belief that on or about September 5, 1974, Seatrain Shipbuilding arranged to transfer title of the T/T Williamsburg to General Electric Credit Corporation.

14. Denies each and every allegation set forth in Paragraph 5(n) of said petition, except admits that, on or about April 17, 1974, the Organization demanded arbitration with Seatrain, pursuant to the terms of the Offshore Division's collective bargaining agreement by and between the Organization and Seatrain, by reason of Seatrain's breach and violation of that agreement with respect to the T/T Brooklyn.

15. Denies each and every allegation set forth in Paragraph 5(o) of said petition, except admits that on or about September 18, 1974, the Organization demanded arbitration with Seatrain, pursuant to the terms of the Offshore Division's collective bargaining agreement by and between the Organization and Seatrain, by reason of Seatrain's breach and violation of that agreement with respect to the T/T Williamsburg.

16. Denies each and every allegation set forth in Paragraph 5(p) of said petition, except admits that the Offshore Division of the Organization has sought to litigate its rights, causes of actions, and claims against Seatrain, by reason of Seatrain's breach and violation of said Offshore Division's collective agreement with the Organization and in accordance with and pursuant to law.

17. Denies each and every allegation set forth in Paragraphs 5(q) and 5(r) of said petition, except admits that on or about April 22, 1974, Seatrain commenced a proceeding against the Organization in the New York County Supreme Court



to stay the arbitration demanded by the Organization, and that on April 23, 1974, Seatrain obtained a temporary restraining order with respect to such arbitration, that thereafter said proceeding was removed to the United States District Court for the Southern District of New York, said case is currently pending in the Southern District of New York (74 Civ. 1983), and admits further that said case was amended by Seatrain to request a stay of arbitration concerning the demand filed by the Organization against Seatrain, by reason of Seatrain's further breach and violation of the Offshore Division collective bargaining agreement arising out of the transfer of title to the T/T Williamsburg.

18. Denies each and every allegation set forth in Paragraphs 5(s), 6 and 7 of said petition.

#### FIRST DEFENSE

19. The petition herein fails to state a claim upon which relief can be granted.

#### SECOND DEFENSE

20. This Court lacks jurisdiction of the subject matter to this petition.

#### THIRD DEFENSE

21. Respondent Organization is not a "labor organization" within the meaning of sections 2(5) and 8(e) of the National Labor Relations Act, as amended (herein the "Act").

22. By reason of the foregoing, petitioner had no reasonable cause to believe that the charge herein was true and that a complaint should issue.

#### FOURTH DEFENSE

23. Respondent Organization repeats each and every allegation hereinabove set forth in Paragraph 21 as if fully set forth herein.

24. Organization is divided into five Divisions, one such Division being the Offshore Division. The membership of said Offshore Division consists solely of licensed deck officers, Masters (i.e., ships' captains) and Mates.

25. Said licensed deck officers, constituting the entire membership of the Offshore Division of the Organization, are "supervisors" within the meaning of section 2(11) of the Act.

26. For many years the Offshore Division, and its predecessor autonomous offshore locals of Organization, negotiated and made, and the Offshore Division's membership alone ratified, collective bargaining agreements with Seatrain covering Seatrain's ocean-going licensed deck officers, all of whom were and are supervisors within the meaning of the Act, as aforesaid. The most recent such Seatrain agreement, so negotiated, ratified and made by the Offshore Division, but written in the name of the Organization, is for the period June 16, 1972 through June 15, 1975 (herein the "1972-75 agreement").

27. By reason of the foregoing, Organization and its Offshore Division did not and do not act as labor organizations within the meaning of Section 8(e) of the Act, in entering into or carrying out the said agreements with Seatrain.

28. By reason of the foregoing, petitioner had no reasonable cause to believe that the charge herein was true and that a complaint should issue.

#### FIFTH DEFENSE

29. Respondent Organization repeats each and every allegation hereinabove set forth in Paragraphs 21, 24, 25, 26, and 27, as if fully set forth herein.



30. Said 1972-75 agreement between the Organization and Seatrain provides, among other things, for a grievance and arbitration machinery, in Section XXXVI. A copy of the text of said Section XXXVI is set forth in Exhibit "A," annexed hereto and made part hereof.

31. On or about April 17, 1974, the Organization demanded arbitration pursuant to the grievance and arbitration provision, Exhibit "A," against Seatrain with respect to a claim of breach and violation by Seatrain of said agreement. The provisions thereof claimed to be violated by Seatrain are set forth in Section V of said 1972-75 agreement, so much of the text of which Section V as is here relevant, is set forth in Exhibit "B," annexed hereto and made part hereof.

32. The Organization's said demand for arbitration against Seatrain arose out of the transfer of title by Seatrain's wholly owned subsidiary, Seatrain Shipbuilding, of the vessel T/T Brooklyn, contrary to, and without compliance on the part of Seatrain or its subsidiaries with, Section V of the agreement, Exhibit "B." Thereafter, and on or about September 18, 1974, the Organization demanded a similar arbitration against Seatrain with respect to another vessel, the T/T Williamsburg..

33. The arbitration machinery established by the agreement, Exhibit "A," was established by Organization and Seatrain, pursuant to national labor policy encouraging the establishment of final and binding voluntary arbitration procedures for the expeditious resolution of industrial relations grievances by such adjustment procedure and method as may be agreed upon by the parties themselves.

34. It is the policy of the National Labor Relations Board to refrain from exercising jurisdiction with respect to conduct which is a contract violation, even if such conduct could also arguably be an unfair labor practice, when the parties involved have voluntarily established final and binding grievance and arbitration machinery.

35. The grievance and arbitration machinery herein (Exhibit "A") is a final and binding dispute settlement machinery, voluntarily established by the parties by contract, and is consistent with and in compliance with national labor policy; and the invocation of such machinery by the Organization is in accord with national labor policy and the policy of the National Labor Relations Board.

36. By reason of the foregoing, petitioner had no reasonable cause to believe that the Board would exercise jurisdiction of the charge herein, that the charge herein was true and that a complaint should issue.

#### SIXTH DEFENSE

37. Respondent Organization repeats each and every allegation set forth above in Paragraphs 21, 25, 26, 27, 30, 31, 32, 33, 34, and 35 as if fully set forth herein.

38. Section V of the 1972-75 agreement with Seatrain (Exhibit "B") contains no obligation on the part of Seatrain to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person.

39. In demanding arbitration, as aforesaid, neither Organization nor its Offshore Division seeks to require Seatrain to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products



of any other employer, or to cease doing business with any other person.

40. The two isolated sales of the T/T Brooklyn and the T/T Williamsburg, by Seatrain Shipbuilding, a wholly owned subsidiary of Seatrain, did not constitute "doing business" and neither the contract (Exhibit "B") nor the demands for arbitration constituted an attempt to compel Seatrain's subsidiary, Seatrain Shipbuilding, "to cease doing business" within the meaning of Section 8(e) of the Act.

41. By reason of the foregoing petitioner had no reasonable cause to believe that the charge herein was true and that a complaint should issue.

WHEREFORE, respondent respectfully prays that the petition herein be dismissed.

Dated: December 6, 1974

Respectfully submitted,

WALDMAN & WALDMAN

By *Justin Waldman*  
A Member of the Firm

Attorneys for Respondent  
501 Fifth Avenue  
New York, N. Y. 10017  
Tel.: MO. 1-1230

## EXHIBIT "A"

## SECTION XXXVI. GRIEVANCE PROCEDURE AND ARBITRATION

a. There shall be no strikes, lockouts or stoppages of work during the period of this Agreement, provided however, that the foregoing provisions shall not be applicable if the Company becomes delinquent in Pension, Welfare, Vacation, or any other MM&P Plan or Committee payments, allotments, or earned wages.

All disputes relating to the interpretation or performance of this Agreement which may arise between the parties to this Agreement shall be determined by a Licensed Personnel Board consisting of two persons appointed by the Organization and two persons appointed by the Company. The parties shall submit any such dispute for decision by the Board and they agree to be bound by the decision of a majority thereof. The Board shall agree to such rules of procedure as it may deem necessary.

In the event no settlement is reached by the Board, the issue may be referred to the Arbitrator by either party for arbitration. The cost of the arbitration shall be borne equally by the Organization and the Company involved.

Unless some other place is mutually agreed upon, the board shall meet in New York (San Francisco in the case of PMA companies) promptly upon the written notice from either the Organization or the Company.

The Organization and the Company may appoint alternates to act in place of the regular members of the Board.

b. John Gentry, Esq. shall serve as Arbitrator and David Feller, Esq. shall serve as Alternate Arbitrator.

The parties agree that all questions as to whether a dispute is arbitrable shall be submitted to and decided by the Arbitrator; provided, however, the Arbitrator shall be without authority to amend the terms of the collective bargaining agreement. The parties agree that all questions concerning the interpretation of an award made by the Arbitrator shall be re-submitted to the Arbitrator for a decision.

c. Pursuant to (a) and (b) above:

The Arbitrator will serve as Chairman of any meeting of the Licensed Personnel Board without vote. If said Board resolves any grievance, either by a majority vote or by mutual agreement, said grievance shall be deemed settled, and the decision shall be final and binding.

d. In the absence of such final disposition by the Licensed Personnel Board, the Arbitrator will then have jurisdiction of the case to render a decision as Arbitrator. Either party may request a further opportunity to present additional evidence for the purpose of the arbitration proceeding. In the absence of any such request or if the Arbitrator should deny such request, he will proceed to issue an award without the need of any further hearings.

e. A fixed date in each calendar month shall be designated for the meeting of the Licensed Personnel Board with respect to any grievances that each party may have. The Company and the Union agree that in order to properly have a grievance submitted to the Licensed Personnel Board at its regular monthly meeting, at least five (5) days' notice, in writing, must be given to the other party, setting forth the nature of the grievance and the relief requested, unless such time limitation is waived. If there are no grievances to be presented at any designated monthly meeting, the Arbitrator will be given twenty-four (24) hours' notice by the parties prior to the date of such meeting and said meeting will be cancelled.

f. Either party may, in addition to such fixed meetings, have the right, by telegraphic notice to the other party and to the Arbitrator, to request a convening of the Licensed Personnel Board to consider a grievance the nature of which requires immediate disposition. In such event the Board shall meet as expeditiously as possible but in no event later than twenty-four (24) hours after receipt of said notice. In such case the award of the Licensed Personnel Board and, where a deadlock of the Licensed Personnel Board



occurs, the Arbitrator, if requested by the aggrieved party, shall issue his decision forthwith and in no event later than five (5) hours after the conclusion of the hearing. In addition, the aggrieved party may agree to waive this time limitation with respect to all or part of the relief requested.

The award of the Arbitrator shall be in writing and may be issued with or without an opinion. If any party desires an opinion, one shall be issued, but its issuance shall not delay compliance with and enforcement of the award.

g. The failure of any party to attend an arbitration hearing as scheduled by the Arbitrator shall not delay said arbitration and the Arbitrator is authorized to proceed to take evidence and to issue an award as though such party were present.

h. It is the desire and purpose of the parties that all grievances, available for Licensed Personnel Board or Arbitration, be disposed of as promptly and expeditiously as possible.

\* Subsequent to the negotiation of the Agreement, John Gentry declined to serve as arbitrator, and the parties agreed that Mitchell M. Shipman, Esq. should serve in his stead as arbitrator.

## SECTION V. VESSELS BOUND BY THE AGREEMENT

### 1. Coverage of Agreement

a. Vessel Coverage. This agreement covers the Licensed Deck Officers employed on oceangoing U.S.-flag vessels, owned, operated or bareboat chartered (both at present or at any time during the life of this Agreement) by the Company or any of its subsidiaries or affiliates (whether so at present or at any time during the life of this Agreement) as an owner, agent, operator or bareboat charterer.

b. Subsidiary and Affiliate. The term "subsidiary" or "affiliate" shall be deemed to include any business entity whether corporate, partnership, trust, individual, or otherwise, which is effectively controlled by or effectively controls the Company either directly or indirectly.

c. Requirement of Subsidiary or Affiliate to Execute the Collective Bargaining Agreement. The Organization may in its discretion at any time require that any such subsidiary or affiliate execute this Agreement and a refusal to do so will give the Organization the right, upon a ten (10) day written notice to the Company, to cancel this Agreement. The failure of the Organization to request a subsidiary or affiliate to sign this Agreement shall not in any way affect the obligation of the Company herein that this Agreement does cover and include all the Licensed Deck Officers on all the vessels described above whether owned or operated by the Company or any of its subsidiaries or affiliates.

d. Agency. It is agreed that a Company operating a vessel as an Agent shall give written notice to the Organization of its status as an Agent and shall be liable for the period that the vessel is under its operation including the completion of any pending voyage for wages, vacation, bonuses and all daily contributions to the MMSP Plans required under this Agreement. The Company is obligated to give written notice to the Organization of any termination of its Agency. Failure to do so will keep the Agent bound to the foregoing obligation until such notice is received by the Organization. If the Organization objects, in writing, to its acceptance of the principal for financial reasons, the Company, if it determines thereafter to continue as Agent, undertakes all of the obligations of the principal under the contract.

e. Tanker Vessels. In the event the Company acquires a tanker vessel, such vessel will be covered under an Agreement similar to that between the Organization and Companies whose maritime collective bargaining agreements with other Unions correspond most closely.

### 2. Sales and Transfers

a. With regard to any sale, charter (but not including a vessel which the Company may be operating under a bareboat charter and the charter is terminated) or any manner of transfer (except sales to foreign flag) of the Company's vessel:

i. At least seventy-two (72) hours prior to the date of the effective transfer of the vessel, written notice must be given to the Organization by the Company.

ii. The execution by the purchaser, charterer or transferee of the Organization's collective bargaining agreement shall be a condition precedent to any sale, charter or transfer.

iii. If the Company violates subsection 2(a)(ii) above, the Arbitrator may include as part of his award, loss of wages and contributions to the various Organization Plans.

iv. A violation of subsection 2(a)(ii) above shall also permit the Organization to cancel the no-strike provisions of this Agreement.

b. Sales to Avoid Payment of Severance Monies. The Company agrees that it will not use the device of a sale to another U.S.-flag Company to circumvent the payment of severance monies due under this Agreement.





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
SIDNEY DANIELSON, Regional Director, :  
Region 2 of the National Labor :  
Relations Board, for and on behalf :  
of the NATIONAL LABOR RELATIONS :  
BOARD, :

Petitioner, :

-against- :

INTERNATIONAL ORGANIZATION OF :  
MASTERS, MATES AND PILOTS, :  
AFL-CIO, :

Respondent. :  
----- x

APPEARANCES

PETER G. NASK, General Counsel  
By: Michael S. London  
National Labor Relations Board  
26 Federal Plaza  
New York, New York 10007

Attorneys for Petitioner

SURREY, KARASIK, MORSE & SEHAM  
By: Martin C. Seham  
500 Fifth Avenue  
New York, New York 10036

Attorneys for Seatrain Lines, Inc.

#41560

74 CIV. 5254

WALDMAN & WALDMAN  
Martin Markson, Of Counsel  
501 Fifth Avenue  
New York, New York 10017

Attorneys for Respondent

CONSTANCE BAKER MOTLEY, D. J.

Findings of Fact and Conclusions  
of Law

This is a proceeding for a temporary injunction enjoining the respondent labor union (IOMMP) from giving effect to or enforcing that part of the collective bargaining agreement (i. e., Section V, 2) between IOMMP and Seatrain Lines, Inc. (Seatrain) which would in effect prevent consummation of or substantially interfere with sales of Seatrain's ships (the T/T Brooklyn and T/T Williamsburg) to purchasers who have non-IOMMP affiliation. On October 1, 1974 Seatrain filed charges that alleged that respondent has engaged in, and is engaging in, an unfair labor practice within the meaning of Section 8(e) of the National Labor Relations Act (NLRA; 29 U.S.C. 158(e) as amended.)<sup>1/</sup>



Accordingly, the Regional Director of the National Labor Relations Board (NLRB) filed a petition for injunctive relief on December 2, 1974 in which it is alleged that he has reasonable cause to believe that the charge filed by Seatrain is true and that an NLRB complaint based on said charge should issue against the union.

On the authority of Section 10(1) of the NLRA (29 U.S.C. § 160(1)), petitioner asks this court for appropriate injunctive relief pending the final disposition of these matters pending before the NLRB on the charge of unfair labor practice.

The limited issue now before the court is whether there is reasonable cause to believe that a violation of Section 8(e) of NLRA has been or is occurring. Based on the evidence and argument presented at the hearing held on December 6 and 9, 1974 the court concludes for the reasons which follow that reasonable cause exists and accordingly grants the injunctive relief sought in the petition.

In reaching its conclusion the court relies heavily on NLRB v. National Maritime Union of America, AFL-CIO, 486 F.2d 907 (2d Cir. 1973), cert. denied, 40 L.Ed.2d 559 (1974), in which a substantially similar clause was found by the

NLRB to be in violation of Section 8(e) and the NLRB's order was enforced by the Court of Appeals. At oral argument, respondent attempted to distinguish this case and raised other issues in an effort to persuade the court that the actions alleged were either outside the Act, or, alternatively, that the challenged clause was acceptable under the NLRA and cases which Judge Feinberg has aptly noted constitute the "judicial gloss on section 8(e)". . . . Id. at 910.

Respondent has argued that the IOMMP is not a labor organization under the NLRA for present purposes. In support of this contention, respondent claims that the only division of the IOMMP which is party to the collective bargaining agreement is the "offshore division" which is composed of supervisory personnel rather than "employees". The court rejects this argument and finds that there is reasonable cause to believe respondent to be a labor organization within the meaning of the NLRA. In so finding, the court relies on IOMMP v. NLRB, 486 F.2d 1271 (D. C. Cir.), rehearing denied, 486 F.2d 1271 (1973), cert. denied, 40 L.Ed. 2d 306 (1974) and petitioner's exhibits one and two (the dry cargo and tanker collective bargaining agreements, respectively) in which IOMMP is a party without reference to



any particular division thereof.

Respondent further claimed that the challenged clause was outside the proscriptions of section 8(e) insofar as it constituted a valid and justifiable "work preservation" clause. In support of this claim, respondent sought to introduce evidence which would have described all of Seatrain's operations affecting the obligations outlined in the contract between Seatrain and IOMMP. Through cross-examination, respondent showed, for example, that various applications for mortgages submitted to the Maritime Administration (petitioner's exhibits five and six) indicated that Hudson Waterways Corporation - a subsidiary of Seatrain which would be bound by the manning provisions of the collective bargaining agreement - was originally destined to operate the vessels being constructed by another subsidiary of Seatrain, i.e., Seatrain Shipbuilding Corporation. Therefore, respondent argues, the subsequent sales of the vessels to outside purchasers, without adherence to the challenged contract provision, denies IOMMP members jobs they would otherwise have had. Respondent concludes that the challenged clauses merely preserved these jobs. The court does not agree.

Under NLRB v. National Maritime Union of America, AFL-CIO, supra, a similar contention was rejected. There, men had already manned the ships prior to the vessels' conveyance to a company with other union affiliation and a similar clause was rejected by the court as an invalid work preservation clause. A fortiori, where, as in the instant case, no manning has yet occurred there is even less justification for invoking the preservation concept.

As a final argument respondent suggested that no sale or sales have occurred and accordingly no business having been done none could have been affected in violation of section 8(e). The court does not agree. Credible evidence at the hearing suggests that both legal and equitable title of the T/T Brooklyn were conveyed and that the T/T Williamsburg has been committed to a buyer. Further, it appears that these are not isolated sales which would bring them within the proviso stated at 486 F.2d at 911 with the effect of rendering the NLRA inapplicable to the challenged clauses. It appears that Seatrin's sales were clearly part of its expected course of "doing business."



For the reasons noted above, petitioner's motion for preliminary relief is granted. Submit order on three days' notice.

Dated: New York, New York

December 11, 1974

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CONSTANCE BAKER MOTLEY  
U. S. D. J.

## FOOTNOTE

1.

Section 8(e) makes it an unfair labor practice for a union and an employer

"...to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person. . . ."



File By Hand  
12/16/74

30a

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

\*\*\*\*\*  
SIDNEY DANIELSON, Regional Director,  
Region 2 of the National Labor  
Relations Board, for and on behalf of  
the NATIONAL LABOR RELATIONS BOARD,  
  
Petitioner  
  
v.  
  
INTERNATIONAL ORGANIZATION OF  
MASTERS, MATES AND PILOTS, AFL-CIO  
  
Respondent  
\*\*\*\*\*

74 Civil 5254

ORDER GRANTING TEMPORARY INJUNCTION

This cause came on to be heard upon the verified petition of Sidney Danielson, Regional Director of Region 2, of the National Labor Relations Board, for and on behalf of said Board, for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, evidence, briefs, argument of counsel, and the entire record in the case, has made and filed its Findings of Fact and Conclusions of Law, finding and concluding that there is reasonable cause to believe that respondent has engaged in acts and conduct in violation of Section 8(e) of said Act, affecting commerce within the meaning of Section 2(6) and (7) of said Act, and that such acts and conduct will likely be repeated or continued unless enjoined.

Now, therefore, upon the entire record, it is

ORDERED, ADJUDGED AND DECREED that respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it or them pending the final disposition of the matters involved herein pending before the Board, be and they hereby are, enjoined and restrained from:

(a) Seeking arbitration or in any other manner maintaining, giving effect to, or enforcing the collective bargaining agreement between The International Organization of Masters, Mates and Pilots, AFL-CIO and Seatrain Lines, Inc. effective for the term June 16, 1972 through June 15, 1975, insofar as the contract provides at Section V(2) that:

Sales and Transfers

a. With regard to any sale, charter (but not including a vessel which the Company may be operating under a bareboat charter and the charter is terminated) or any manner of transfer (except sales to foreign flag) of the Company's vessel:

i. At least seventy-two (72) hours prior to the date of the effective transfer of the vessel, written notice must be given [sic] to the Organization by the Company.

ii. The execution by the purchaser, charterer or transferee of the Organization's collective bargaining agreement shall be a condition precedent to any sale, charter or transfer.

iii. If the Company violates subsection 2(a)(ii) above, the Arbitrator may include as part of his award, loss of wages and contributions to the various Organization Plans.

iv. A violation of subsection 2(a)(ii) above shall also permit the Organization to cancel the no-strike provisions of this Agreement.

(b) Entering into, maintaining, giving effect to, or enforcing any other contract or agreement, express or implied, whereby the aforesaid International Organization of Masters, Mates and Pilots requires Seatrain or any other person to cease or refrain or agree to cease or refrain from handling, using, selling, transporting, or otherwise dealing in the products of any other employer, or from doing business with any other person.

Dated at New York, New York

this            day of December 1974

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United States District Court



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RE:DC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SIDNEY DANIELSON, :  
Plaintiff, :

v. : 74 Civ. 5254

INTERNATIONAL ORGANIZATION OF :  
MASTERS, MATES & PILOTS, AFL-CIO, :  
Defendant. :

----- x

SEATRAN LINES, :  
Plaintiff, :

v. : 74 Civ. 1983

INTERNATIONAL ORGANIZATION OF :  
MASTERS, MATES & PILOTS, AFL-CIO, :  
THOMAS F. O'CALLAGHAN, individually, :  
and as president thereof, :  
Defendants. :

----- x

B e f o r e:

HON. CONSTANCE B. MOTLEY,  
District Judge

December 6, 1974  
4:15 p.m.

APPEARANCES:

MICHAEL S. LONDON, Esq.,  
Attorney for NLRB



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memo

SURREY, KARASIK, MORSE & SEHAM, Esqs.,

Attorneys for Seatrain Lines,  
Plaintiff and Charging Party

ANDREW E. ZEILMAN, Esq.,

MARTIN SEHAM, Esq.,

of Counsel

WALDMAN & WALDMAN, Esqs.,

Attorneys for International Organization  
of Masters, Mates & Pilots in 74 Civ 5254

MARTIN MARKSON, Esq.,

of Counsel

MARVIN SCHWARTZ, Esq.,

Attorney for International Organization  
of Masters, Mates & Pilots in 74 Civ 1983

BURTON M. EPSTEIN, Esq.,

of Counsel

SCHULMAN, ABARBANEL & SCHLESINGER, Esqs.,

Attorneys for United Industrial Workers,  
Applicant to appear as Amicus

DAVID JAFFE, Esq.,

of Counsel.

...

MR. LONDON: Petitioner is ready.

MR. MARKSON: Your Honor, respondent has an  
application to make.

THE COURT: All right.

MR. MARKSON: If your Honor please, respondent  
asks for an adjournment until the return date. We are  
asking for this adjournment for several reasons.

1  
2           Number one, we think that there ought to be an  
3 ample opportunity on our part to brief the various ques-  
4 tions to present the case to your Honor in the best light  
5 possible for the assistance of the Court and for the doing  
6 of justice, if you please, to both the petitioner and the  
7 respondent.

8           We think that coming into court two days after  
9 the service and doing so on the last afternoon of the  
10 week is a particularly onerous kind of thing, and very  
11 difficult on the part of people to be able to present a  
12 case properly so that your Honor may have the benefit  
13 of whatever it is that we can present to you factually and  
14 legally.

15           It seems to me, your Honor, that we would  
16 have several days of hearing in this case, with a fairly  
17 large evidentiary hearing that will be required, with  
18 voluminous testimony, and lots of evidence, documentary  
19 evidence, some of it quite difficult.

20           THE COURT: Well, maybe I misunderstood the  
21 case, but I have read the papers, and it seems to me  
22 that the question is whether a particular portion of  
23 your contract with the -- what is the name of the company --  
24 with the Seatrain Company, violates the National Labor  
25 Relations Act.



2 Is there something else involved here?

3 MR. MARKSON: I think there are a host of  
4 other companies that are involved as to whether or not  
5 there ought to be an injunction.

6 THE COURT: Pardon me? I didn't hear the last  
7 part.

8 MR. MARKSON: As to whether or not there ought  
9 to be an injunction issued. Section 8(e) is a very  
10 special kind of section. It is not -- it is tailored to --

11 THE COURT: The question here is whether that  
12 particular provision-- do you have the notes written out  
13 on this case? As I said, the only issue in this case,  
14 as I see it, is whether Section 5 of the agreement, which  
15 the union has, was it the Champion?

16 MR. ZELMAN: Seatrain Lines.

17 THE COURT: This is Section 8(e) of the National  
18 Labor Relations Act.

19 MR. MARKSON: And that in turn, your Honor,  
20 raises a host of other questions, including whether or  
21 not, for example, the Masters, Mates & Pilots is a labor  
22 organization, because Section 8(e) is only pointed at the  
23 issue of whether or not -- at contracts that are made  
24 between employers and labor organizations, and it would  
25 be the union's position, and we expect to adduce the

2 appropriate testimony to that effect that Section 8(e)--  
3 that the Masters, Mates & Pilots, that is, is not a labor  
4 organization in the sense that it is used in Section 8 (e)  
5 and within the meaning of the Act.

6 This depends upon basic fundamental evidentiary  
7 presentation that would take, your Honor, a period of time  
8 to develop.

9 I, for example, have not had opportunity to see  
10 a single witness because they have been out of town. The  
11 officials of the union have not been here. I will be  
12 able to see them and therefore within the next week I  
13 would ask for an opportunity to, for example, just on that  
14 point, to --

15 THE COURT: You mean that question has not been  
16 passed on as to whether you are --

17 MR. MARKSON: It can't possibly be passed on  
18 because we are dealing with that question in a context of  
19 this charge in this case in this proceeding. Whatever  
20 may have been passed on in any other case, in any other  
21 context is not applicable here.

22 THE COURT: Well, if you are making a motion to  
23 adjourn this hearing, it is denied. I don't think that  
24 it would require a long lengthy hearing from my review of  
25 these papers, and you may proceed.



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1 me:mg

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2 MR. EPSTEIN: If your Honor please, may I proceed  
3 for a moment?

4 THE COURT: Yes.

5 MR. EPSTEIN: My name is Burton Epstein. I am  
6 counsel for the International Organization, Masters,  
7 Mates & Pilots, and I am appearing here with respect to  
8 the other matter which I understand is also before your  
9 Honor at this time, that is, the - or maybe I misunder-  
10 stood.

11 THE COURT: Yes, the other matter is here, too,  
12 but it seems to me that if the Regional Director succeeds  
13 on his application, that would be moot.

14 I gather you are representing the International  
15 Organization of Masters, Mates & Pilots. What was  
16 your name again, sir?

17 MR. MARKSON: My name is Martin Markson, your  
18 Honor.

19 THE COURT: You represent?

20 MR. MARKSON: The Masters, Mates & Pilots in the  
21 10 (1) proceeding brought by the Board.

22 THE COURT: And you represent the same union in  
23 the action brought by Seatrain?

24 MR. EPSTEIN: Yes, your Honor.

25 THE COURT: The Regional Director may proceed.

1  
2 MR. EPSTEIN: When we discussed this matter  
3 requesting the adjournment before we appeared before your  
4 Honor, the Regional Director indicated he would have no  
5 objection to such an adjournment, and as Mr. Markson has  
6 said, the papers were served Tuesday. I was in Washington.  
7 I was in Washington on Wednesday. We had understood  
8 that the matter was going to be - of course, it is sub-  
9 ject to your Honor's decision as to whether the hearing  
10 will go on- but as Mr. Markson indicates, it is a substan-  
11 tial evidentiary hearing matter where many elements are  
12 going to be brought before the Court, and we feel that  
13 we just have not had sufficient time to prepare our case  
14 in order to have our witnesses ready.

15 The question of --

16 THE COURT: I have just told you that if the  
17 Regional Director succeeds, your case is moot. You  
18 would not have anything to do.

19 Would the Regional Director proceed, please?

20 MR. LONDON: Yes, your Honor.

21 I would like to call as our first witness, Mr.  
22 Charles J. Hess.

23 ...

24 C H A R L E S J. H E S S, called as a  
25 witness by the National Labor Relations Board, having



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Re:mg

Hess-direct

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been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LONDON:

Q Would you tell the Court, Mr. Hess, what your position is?

THE COURT: What is your name, sir, before you proceed?

MR. LONDON: Michael London.

THE COURT: All right.

Q Mr. Hess, would you tell the Court what your position is with Seatrain Lines, Incorporated?

A Vice President and Treasurer.

Q In a general sense, Mr. Hess, could you outline your primary duties to the Court as Vice President and Treasurer for Seatrain Lines?

A It would be setting up the billings and overseeing the collection of bills and making payment of the various bills of the corporation, and overseeing some of their investments.

Q And how long have you been with the company, sir?

A Well, that would have to go into reorganization and so on.

I was with this particular firm since about 1954. We acquired Seatrain Lines, I believe it was in 1965.

1 THE COURT: What is your name, sir?

2 THE WITNESS: Hess.

3 THE COURT: Mr. Hess, we would not like to have  
4 to strain to have to hear you. Will you please speak up  
5 so the reporter can hear you and the lawyers at that back  
6 table can hear you, and you don't have to repeat everything  
7 as we go along. It is a strain. I am sitting right here,  
8 and I am straining to hear you.  
9

10 Now please speak up.

11 Q How long have you been treasurer of Seatrain?

12 A Of Seatrain, since 1965.

13 Q And how long have you been vice president?

14 A Since 196-- no, since last year .

15 Q Will you tell the Court where the Seatrain Lines,  
16 Incorporated is located?

17 A It has executive offices at One Chase Manhattan  
18 Plaza.

19 Q Where are they incorporated?

20 A They are incorporated in the State of Delaware.

21 Q And what were your revenues during the last fiscal  
22 year?

23 A I believe in excess of \$150 million.

24 Q Could you please tell the Court, Mr. Hess, in a  
25 functional sense, the structure of Seatrain Lines?



1           A     Well, Seatrain Lines, you could more or less  
2  
3     look at it as three divisions. One of the divisions would  
4     be the container division, which would operate the carriage  
5     of containerized cargo on the North Atlantic, the Carib-  
6     bean and out in the Pacific.

7                 Another of the divisions would be the chartering  
8     and tramp operation. That would be basically the oper-  
9     ation of ships.

10                Now, these shops would either be in the tanker  
11     trade or you would have in the grain trade to Russia and  
12     so on, and ships for the military.

13                The other division would be the shipbuilding di-  
14     vision.

15                Now, there are various companies involved in the  
16     operation, but to simplify, that is the way I always look  
17     at it, basically the three divisions.

18           Q     Would you give the Court a general picture of  
19     what your corporate structure is like, starting with the  
20     parent company -- let me ask you this question -- about  
21     how many affiliates and/or subsidiaries comprise Seatrain  
22     Lines, Inc.?

23           A     I would judge approximately 25 to 30 companies.

24           Q     And in a structural corporate sense, did you  
25     give us a breakdown of their Seatrain Lines, Inc. structure?

1           A     Well, as I say, if you would want me to let the  
2 companies fall in there functionally, it would be much  
3 simpler and more simplified for everyone, because if you  
4 took it corporate-wise, going through the corporate lines,  
5 there would be crosses back and forth.  
6

7                 It is much simpler to look at it in a fundamental  
8 basis.

9           Q     In a functional sense and in the best way for the  
10 Court to take a look at your operations.

11          A     You have Seatrain Lines at the top, naturally,  
12 and Seatrain Lines Container Division.

13                 That Seatrain Container Division is not a corpor-  
14 ate entity, more or less it fell that way.

15                 Now, within that particular division, you would  
16 have the company such as Seatrain International, Ocean  
17 Equipment Corporation, and Seatrain Lines California, Sea-  
18 train Lines of Puerto Rico; the various companies that  
19 would be basically doing nothing but operating in the  
20 accumulation and the shipping of containerized cargo.

21                 Now, in the chartering, in the tramp area, you  
22 would have, say, Manhattan Tanker Corporation, Hudson  
23 Waterways Corporation, who are shipowners and ship oper-  
24 ators; Trans-Eastern Shipping Corporation, which is the  
25 owner of a tanker, and Albatross Tankers, which is another



one which has a tanker, and various other subsidiaries. Mainly, that area would be concerned with chartering, operating, and so on, of ships.

Now, the other division, which we would have as the shipbuilding division, where you have Seatrain Shipbuilding Corporation, and more in that area, we have other subsidiaries, such as Langfitt.

Q Mr. Hess, what is the relationship between Seatrain Lines, Inc. and Seatrain Lines Shipbuilding?

A Seatrain Shipbuilding Corporation is a wholly owned subsidiary of Seatrain Lines.

Q In your capacity as vice president and treasurer of Seatrain Lines, Inc., are you familiar with the duties and functions of the various subsidiaries and affiliates of Seatrain Lines, Incorporated?

A Yes, I am. I am basically an officer of all of them.

Q What is the function of Seatrain Shipbuilding, Incorporated?

A It is to build and sell ships.

Q Do you recall, Mr. Hess, when Seatrain Shipbuilding, that is, began operations?

A I think it is approximately 1968, 1969, somewhere in there.

Q And where is the shipbuilding located?

A The old site of the Brooklyn Navy Yard.

Q And do you know how many vessels have been constructed and sold as of this date?

A One.

Q And what is the name of that ship, sir?

A The S. S. Brooklyn.

Q Are there any other ships that are under construction at this time, do you know?

A Yes. There are three others.

Q Would you tell the Court their names?

A The Williamsburg, Stuyvesant, and Bay Ridge.

Q And at the present time, what is the status of the Williamsburg?

A Well, she is practically completed.

Q Has the Williamsburg been sold as of this date?

A No, but there is a letter of commitment for the sale of the vessel.

Q And do you know what the anticipated completion date is of the Williamsburg?

A I would say somewhere around December 20th.

Q And does Shipbuilding in the future contemplate the construction of any other vessels?

A Yes.



Q Directing your attention to the construction of the Brooklyn, for what particular purpose was it originally constructed?

A For use in the oil trade.

Q Subsequent to its construction or some time during its construction, was the Brooklyn ever sold?

A Yes.

Q Would you tell the Court, to your knowledge, the transaction about the sale of the Brooklyn?

A Well, the Brooklyn was sold to --

MR. MARKSON: If your Honor please, I am going to object to any further testimony about these transactions unless the Labor Board is prepared to produce the documents from which the conclusions as to what the transactions are can be drawn.

The fact that it was sold, I assume that the initial transaction is one in which this gentleman participated. From that point on, I think we are dealing with documents that have to be produced in court from which conclusions cannot be drawn by the witness.

MR. LONDON: Your Honor, certainly as vice president in charge of financial matters and as treasurer, he would know about the sale of the ship to whatever corporations were involved and I think he would be in a perfect

1 me:mg

Hess-direct

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2 situation to be able to give us that information.

3 MR. MARKSON: He has already testified, your  
4 Honor, to the sale by Seatrain Shipbuilding.

5 He is now going into other transactions regarding  
6 that ship, and I think there we have to deal with funda-  
7 mental documents.

8 THE COURT: You mean the sale beyond that? Is  
9 that what he is being asked about?

10 MR. LONDON: No, I asked him about the initial  
11 sale.

12 MR. MARKSON: Then I think the question should  
13 be read by the reporter. I think he is asking beyond that.

14 THE COURT: All right. Would you read the question,  
15 please?

16 (Question read.)

17 THE COURT: And that is from his company to some-  
18 one?

19 MR. LONDON: Right.

20 THE COURT: Overruled.

21 A The Brooklyn was sold to General Electric Credit  
22 Corporation, who in turn time-chartered it to American --  
23 bareboat chartered it to East River Steamship Corporation,  
24 who in--

25 MR. MARKSON: Your Honor, the witness is going



1 directly into this area involving other corporations  
2 as to which there is no testimony that he has any relation-  
3 ship and I think that your Honor should insist that the  
4 Labor Board produce the documents on which this witness  
5 is drawing conclusions as to time charter, bareboat charter  
6 and so on.  
7

8 THE COURT: What is the basis of this witness'  
9 knowledge?

10 MR. ZELMAN: May I be heard on this? I am  
11 counsel for Seatrain Lines.

12 As you might anticipate in a transaction that  
13 involves \$79 million, \$73 million in another case, the  
14 transaction, the single transaction involving both the  
15 transfer of title and the ultimate disposition of the  
16 vessel was in fact a single transaction.

17 THE COURT: All right. Overruled.

18 You may proceed.

19 Q Would you please finish answering that question?

20 MR. MARKSON: If your Honor please, I think the  
21 question was what knowledge does this witness have.

22 THE COURT: We just heard it from this lawyer  
23 representing Seatrain.

24 MR. MARKSON: That is what the Seatrain lawyer  
25 says, but the witness may not have been there. I have

1 no:mg

Hess-direct

17

2 no idea who he was, I don't know what his testimony would  
3 be.

4 THE COURT: He knows it by virtue of his capacity  
5 with this company.

6 MR. MARKSON: May we have the witness answer such  
7 questions, your Honor?

8 THE COURT: He told us what his capacity was.  
9 Is that what you are asking for?

10 MR. MARKSON: I am asking, your Honor, that on  
11 transactions that involve other corporations than those  
12 in which Mr. Hess happens to be an officer, that the only  
13 evidence as to those transactions has to be in the terms  
14 of the documents involving <sup>all</sup> ~~all~~ the witnesses from the  
15 different corporations.

16 THE COURT: Overruled. Proceed, please.

17 MR. MARKSON: May I have a standing objection?

18 THE COURT: Yes, you may.

19 Proceed.

20 A Well, the tanker Brooklyn was sold by Seatrain  
21 Shipbuilding Corporation to General Electric Credit  
22 Corporation, who in turn bareboat<sup>d</sup> the vessel to East  
23 River Steamship Corporation.

24 Q Will you explain to the Court briefly what a  
25 bareboat charter is?



1  
2 A Well, a bareboat charter is where you-- I don't  
3 want to use technical terms-- where you actually rent the  
4 vessel as a shell, the vessel in itself.

5 Now, it would be up to the bareboat charterer to  
6 crew the ship, to furnish stores, to arrange for the feed-  
7 ing and maintaining that ship throughout and then return  
8 it back to the owner at the end of the period of the  
9 charter in the same condition he got it from the charterer  
10 with the exception of fair wear and tear.

11 Q And would you tell the Court whom the Williamsburg,  
12 the contemplated purchaser of the Williamsburg is?

13 A General Electric Credit Corporation.

14 MR. MARKSON: Now, your Honor, I think I heard  
15 the witness testify that this vessel was sold by Seatrain  
16 Shipbuilding to General Electric Credit Corporation, and  
17 if my recollection is correct, that is what his testimony  
18 was, and if that is so, then his testimony is at variance  
19 with the pleading, and I move the testimony be struck  
20 entirely.

21 Paragraph 5(i) alleges the sale to some other  
22 corporation.

23 I renew my objection.

24 THE COURT: What do you say to that, Mr. London?

25 Mr. London: I'd like to amend our Paragraph (i);

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Hess-direct

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that it was sold to GECC and that Wilmington Trust Company acted as agent for GECC.

MAR. MARKSON: That is the statement of the counsel.

THE COURT: He is making a motion to amend the pleadings to so state.

MR. MARKSON: I object to the amendment of the pleading at this moment in view of the evidence on the hearing that it involved one company and now there is testimony that it involves another company.

THE COURT: Are you making an objection?

MR. MARKSON: I object, your Honor.

THE COURT: Overruled.

Q Mr. Hess, turning to the sale of the Brooklyn, to GECC, are you aware from your own experience whether GECC had an agent acting on their behalf?

A Yes, Wilmington Trust Company would accept the delivery as trustee for General Electric.

Q Staying on the subject of the sale of the Brooklyn, do you know from your own knowledge, whether East River entered into a management agreement for the operation of the Brooklyn with another company?

A Yes, I do.

Q Would you explain to the Court what that relation-



1  
2 ship was?

3 A Well, I was at the closing document of the  
4 transaction and it was a management agreement with -- it  
5 was a management agreement with Anndep.

6 Q Now, turning your attention, Mr. Hess, to the  
7 transaction for the sale of the Williamsburg, would you  
8 tell the Court about that transaction?

9 A Right now you have a commitment letter from  
10 General Electric and it should follow basically the same  
11 procedure as the Brooklyn.

12 Q Is that the same General Electric Credit Corpora-  
13 tion that we mentioned in the sale of the Brooklyn?

14 A Yes.

15 Q In this particular case, in the sale of the  
16 Williamsburg, are you familiar with who the bareboat  
17 charterer is going to be?

18 A I believe it will be Kingsway Tankers, Inc.

19 MR. MARKSON: I move the answer be struck. It  
20 is just the witness' belief. It is incompetent.

21 THE COURT: Yes, tell us what you know, only of  
22 your own knowledge.

23 A Kingsway Tankers, Inc.

24 Q To your knowledge, concerning the sale of the  
25 Brooklyn to GECC Corporation, is GECC Corporation a

1 subsidiary, affiliate or in any way connected with  
2 Seatrain Lines, Incorporated?  
3

4 A No.

5 MR. SEHAM: Your Honor, pursuant to Section  
6 10(1) I would like to ask a few questions representing  
7 the charging party.

8 THE COURT: All right.

9 MR. SEHAM: I would do it for the purpose of  
10 clarification.

11 MR. MARKSON: I don't know if the charging party  
12 is a party to this proceeding, not that I don't respect  
13 Mr. Seham's qualifications and ability.

14 MR. SEHAM: I am a party to the proceeding or  
15 at least I have a right to appear pursuant to Section  
16 10(1) which says that upon the filing of any such peti-  
17 tion, the Court shall cause notice, et cetera, et cetera,  
18 and concluding, the charging party shall be given an op-  
19 portunity to appear by counsel, et cetera.

20 THE COURT: All right.

21 CROSS-EXAMINATION

22 BY MR. SEHAM:

23 Q Mr. Hess, just one or two questions.

24 In the case of both the ships, the Brooklyn and  
25 the Williamsburg, do you know to whom the ships have been



1 time-chartered?

2 A To American Petrofina.

3 Q Perhaps, briefly, would you explain the differ-  
4 ence between a time charter and a bareboat charter?  
5

6 A Well, in a time charter, where someone is time-  
7 chartering a vessel, as opposed to bareboat chartering a  
8 vessel, when you are time-chartering a vessel in, the  
9 owner of the vessel would furnish the crew, furnish the  
10 food and maintenance, and so on, the vessel. And -- just  
11 a minute-- as far as maintaining the vessel, as far as any  
12 of the damages which he would do, on a bareboat, it is a  
13 fair wear and tear. On a time charter, it does not come  
14 under the fair wear and tear basis.

15 Then the time charterer, as such, would furnish  
16 the fuel. Basically, if I could talk technically, a time  
17 charterer, you charter the vessel out with a crew, with  
18 the vessel fully insured, and you would main - the owner  
19 would maintain the vessel, and the charterer would just  
20 be responsible, the time charterer would just be respon-  
21 sible for any damage which he had done.

22 Now, the time charterer, on the other side of the  
23 coin, he would fix the ships or obtain the cargo for the  
24 ships wherever in the world he could.

25 Now, it would be at his expense to pay for all

1 being

23 -cross

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2 the fuel, all of the expenses, and anything pertain-  
3 ing to the cargo on that ship.

4 Q Would you describe the transaction involving the  
5 sale of the Brooklyn?

6 Can you tell us whether prior to the commencement  
7 of the construction of the Brooklyn, there had been any  
8 agreement or arrangement to sell that vessel to anyone?

9 A No, there had been no agreement to sell the ves-  
10 sel.

11 Q And, finally, one composite question: You have  
12 mentioned a number of corporate entities in your testi-  
13 mony, to wit, Wilmington Trust, GECC, Kingsway, East  
14 River and Ancker.

15 Now, with respect to all of those corporations,  
16 are they in any manner an affiliate, subsidiary or in any  
17 other way corporately related to Seatrain Lines or any of  
18 its affiliates?

19 A No.

20 MR. SEHAM: That's all.

21 Thank you.

22 CROSS-EXAMINATION

23 BY MR. MARKSON:

24 Q Mr. Hess, I think in response to the last ques-  
25 tion by Mr. Seham, you said there were no arrangements



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Hess-cross

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made for the sale of the Brooklyn prior to the commencement of construction, is that correct, sir?

A That is correct.

Q And when did construction commence?

A I believe it was 1969. 1969. Somewhere in that area.

Q And it was completed in 1973, is that correct, sir?

A Yes.

Q So it took about four years, approximately, to construct?

A Yes.

Q And the firm that-- withdraw that.

The corporation that did the constructing was Seatrain Shipbuilding?

A Yes.

Q Are you an officer of Seatrain Shipbuilding?

A Yes.

Q Did Seatrain Shipbuilding own the ship at any point?

A I don't understand the question.

Q All right.

They reached a time when Seatrain Shipbuilding entered into arrangements for the sale of the Brooklyn,

1 isn't that correct, sir?

2 A Yes.

3 Q When were those arrangements made?

4 A I don't follow the question.

5 THE COURT: When it went into contract to sell  
6 the boat, is that what you are getting at?

7 A Well, there was a contract entered into in, say,  
8 approximately 1970 -- 1968, somewhere in that area, where  
9 Langfitt Shipping Corporation, to construct the vessel  
10 for Langfitt.  
11

12 Now, in effect, Langfitt sold that construction  
13 contract to General Electric Credit Corporation.

14 Q It is now your testimony that Langfitt Corporation,  
15 which is also a wholly owned subsidiary of Seatrain -- is  
16 that correct, sir?

17 A Yes.

18 Q -- that Langfitt Shipping Corporation entered  
19 into a contract to construct a ship which was later called  
20 the Brooklyn?

21 A Yes.

22 Q And the constructing agent, so to speak, was a  
23 co-subsiary of Seatrain, Seatrain Shipbuilding Corpora-  
24 tion, is that your testimony?

25 A Yes.



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Hess-cross

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Q And that the contract was then made by Langfitt to sell its ownership, the ship, to an outside third party, Wilmington Trust Company?

4

5

A No, I didn't say that.

6

Q Is that your testimony?

7

A No.

8

Q All right, then, suppose you tell us what hap-

9

pened.

10

A The contract between Seatrain Shipbuilding and

11

Langfitt Shipping Corporation was sold to General Electric

12

Credit Corporation.

13

Q That is the 1973 sale, sir?

14

A It in effect was sold to General Electric Credit

15

Corporation.

16

Q When you say the contract, you mean the ship-

17

building contract? Is that what you mean?

18

A The shipbuilding contract was sold by Langfitt

19

Shipping Corporation to General Electric Credit Corp.

20

Q Do you know who was the record owner of the

21

Brooklyn, the initial record owner of the Brooklyn, at

22

the Maritime Administration?

23

A I don't understand the question.

24

Q Is there a record maintained at the Maritime

25

Administration as to the ownership of ships?

1 A The ownership of a completed vessel, the Brooklyn?

2 Q Yes.

3 A Would show as Wilmington Trust Company as agent  
4 for General Electric Credit Corp.

5 Q And prior to Wilmington Trust Company as agent,  
6 will you be listed?

7 A There would be no listing.

8 Q Was this construction a subsidized construction?

9 A Yes.

10 Q By "subsidized," we mean subsidized by the United  
11 States Government?

12 A Yes.

13 Q Is that through the Maritime Administration?

14 A Yes .

15 Q And do you know whether or not it was Langfitt  
16 Shipping Corporation that made application for subsidy for  
17 the construction of the ship?

18 THE COURT: What is the relevance of that to this  
19 case?

20 MR. HARKSON: Well, if your Honor please, we have  
21 a rather complex situation where we have a whole group of  
22 companies, 15, 20, 25, I don't know how many there are, that  
23 all deal with the central, or fall under the central name  
24 of Seatrail Lines, and they do various things, including  
25



building ships.

It is our contention that the single isolated sale of this vessel by Seatrain, using that in its broadest sense of the word, is not doing business within the meaning of Section 8(e) of the National Labor Relations Act. And that there being "no doing business," there inferentially, as you step down from that, can be no interference by any action on the part of this union in any sense, since the inhibition which is the-- the proscription, I should say, of Section 8 (e) is a proscription that falls upon those activities which interfere with the doing of business, and I want to find out from this witness what the chain of title is of this vessel, and I intend to ask the same questions with respect to the Williamsburgh, so that we can see that it is all within the corporate structure and that the sale outside of the corporate structure was not something that was part of the business operation, but was something that happened for other reasons altogether.

THE COURT: I was directing my attention to or your attention to the question which you asked as to whether it was subsidized.

MR. EPSTEIN: May I reply?

THE COURT: No, you may not.

1  
2 MR. MARKSON: Part of the questions have to do  
3 with the fact that corporations have made certain repre-  
4 sentations to the Maritime Administration in the course  
5 of their application for subsidies, and I wanted to take--  
6 bring testimony from this witness with respect to these  
7 applications as to what the intention was on the part of  
8 Seatrain in the initial period when they built the ship,  
9 that this was not being built for an outside transaction.

10 MR. LONDON: Your Honor, if I may be heard.

11 For one, the doing business concept has already  
12 been answered in the National Maritime Union of America--  
13 Commerce Tankers Corporation, 196 National Labor Relations  
14 Board, page 11, which was enforced 486 Fed. 2nd, page 907.

15 THE COURT: What is the answer? What is the  
16 answer?

17 MR. LONDON: They said it is engaged in doing  
18 business within the meaning of Section 8(e) of the Act.

19 THE COURT: What is?

20 MR. LONDON: The building and sale of ships.

21 No. 2, your Honor, we have had testimony already  
22 that shipbuilding is a subsidiary and affiliate which is  
23 exclusively engaged in the constructing and selling of ships.  
24 That is their purpose.

25 MR. SEHAM: Your Honor, I can further help and



1  
2 provide some stipulations which will at least on our  
3 part, if they are acceptable to the Board counsel, as to  
4 what some of the facts are here, but a great number of  
5 the facts that are being elicited now are facts which  
6 are amply set out in the affidavits and the pleadings in  
7 the other joint case.

8 First of all, with respect to the ultimate dis-  
9 position of the ship and the Maritime applications as is  
10 demonstrated in the applications already before the Court--

11 MR. EPSTEIN: If your Honor please, may I  
12 interrupt Mr. Seham to understand how it is that Mr. Seham  
13 is being--

14 THE COURT: He has read part of the statute  
15 which permits him to participate in the case.

16 MR. EPSTEIN: It seems the examination is now  
17 by Mr. Markson of the witness at this point. I am counsel  
18 to the International Organization of Masters, Mates &  
19 Pilots. I was in Washington on Tuesday and Wednesday.  
20 I had sought some opportunity to assist Mr. Markson on  
21 his questions, since I think I have perhaps more time  
22 in this matter, and I might be of further assistance to  
23 be able to elicit some of the testimony and perhaps pro-  
24 vide some of the answers as to why this line of testimony  
25 is being inquired into.

1 THE COURT: Well, the only thing I am getting at  
2 is, I can't have you interrupting Mr. Seham when he is  
3 talking. Mr. Seham is talking. You are getting up and  
4 wanting to talk. Now, if you want to cross-examine this  
5 witness, you can ask for that. I can't have four lawyers  
6 butting into each other here. The reporter can't get it  
7 for one thing.

8 Now, what were you saying?

9 MR. SEHAM: Your Honor, my comments are de-  
10 signed to abbreviate this hearing.

11 In the pleadings and affidavits submitted to  
12 you in connection with the other case, we went into the  
13 transactions that he is now trying to get at.

14 And we admitted and would admit through his tes-  
15 timony and as counsel for the company I do, that in the  
16 original applications to MARAD, Maritime Administration,  
17 it was indicated in those applications that Seatrain,  
18 through some of its other subsidiaries, intended to oper-  
19 ate the vessels themselves.

20 As Mr. Hess already testified, at that time there  
21 was no buyer for these vessels, so if no buyer was ob-  
22 tained, the obvious conclusion was that Seatrain, through  
23 its operating subsidiaries, had to operate the vessels  
24 itself.



1  
2 In point of fact, what happened, as the vessels  
3 went through construction, a buyer was found, and we sub-  
4 mit that it was an independent buyer, and we sold those  
5 vessels.

6 Now, those are the facts and those facts stand  
7 admitted in our stipulation.

8 THE COURT: There is a stipulation in the other  
9 case?

10 MR. SEHAM: In our affidavit in the other case.

11 THE COURT: A stipulation, that means signed by  
12 both parties?

13 MR. SEHAM: I withdraw that. I meant affidavit.  
14 I misspoke. But we are willing, at least as spokesman  
15 for the company, are willing to stipulate those facts.  
16 Beyond that, the argument that building and selling ships,  
17 when we have four under construction, one sold, one sub-  
18 ject to a letter of commitment, with literally hundreds of  
19 millions of dollars being spent and acquired, is not  
20 doing business, I suggest, is a frivolous position, and  
21 if the questions are directed to that end, I think it is  
22 for purposes of delay.

23 THE COURT: Yes, I think so. That is a frivolous  
24 suggestion.

25 Now, what I am going to suggest --

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Hess-cross

MR. MARKSON: May I be heard a moment on that, your Honor, because I do not like to be told in court by opposing counsel, or quasi opposing counsel, that I am making frivolous questions.

THE COURT: That has already been ruled on in the case that they cited.

MR. MARKSON: It has not. The Second Circuit, your Honor, in National Labor Relations Board v. the NMU decided last October, October 1973, very specifically said that it was not deciding the question of whether a single sale of a ship was or was not doing business.

I quote from I think it is Judge Feinberg's opinion.

He says: "It may be" -- I beg your pardon. I withdraw that.

"It may at least be doubted whether an isolated sale of a capital item such as a ship comes within the language." End of quote. The language being, to cease doing business. And I was reading from 486 F.2nd. 907, at page 911.

And it is going to be our contention that this corporation Seatrain looked at in its entirety, with its scores of ships, can very well afford, what appears to us, the luxury of having its own in-house shipbuilding



1  
2 corporation building ships for itself, which is the very  
3 thing that this corporation said they were doing in making  
4 application to the Maritime Commission for subsidy.

5 MR. SENAM: Your Honor, in the case that he is  
6 referring to the Board ruled, first of all, the sale of  
7 ships was first of all doing business. Secondly the sale  
8 of ships in that sale was a sale by an operating company.

9 In other words, a shipping company could have one  
10 of its vessels in commission to another company so there  
11 was an issue raised as to whether the business was shipping  
12 or ship-selling.

13 In this case, it is clear that we have the Brooklyn  
14 Navy Yard, which is not an incidental, sometime thing. We  
15 are in the business of building and selling ships. And  
16 there is about a half a billion dollars that is involved  
17 in that situation.

18 So, I can't help but repeat my suggestion that  
19 the argument is a frivolous one.

20 MR. LONDON: Your Honor, the witness has already  
21 testified that the Williamsburgh already has a purchaser.  
22 It is the second ship.

23 MR. MARKSON: It has a commitment, that's all.

24 THE COURT: All right, what we are going to do,  
25 gentlemen, is to recess until noon on Monday, and in the

interim, the Court requires the parties to get together and stipulate as many of these facts as can be to save the time of dragging it out of the witness.

It seems to me that certain of these facts are not in dispute. So when you come in at noon on Monday, bring in with you a stipulation as to certain facts about this company and its business.

MR. SEHAM: Your Honor, could I ask simply a different starting time on that? I have a commitment on a collective bargaining agreement. If we could have an hour or two, make it either one or two.

THE COURT: All right, we will start at two o'clock on Monday.

MR. JAFFE: If it please your Honor, my name is David Jaffe. I have an application for our firm to appear amicus for United Industrial Workers only in the Seatrain case.

THE COURT: Well, I don't understand what you mean by only in the Seatrain case.

MR. JAFFE: Only in the case of Seatrain against Masters, Mates & Pilots, not in this 10 (1) proceeding.

THE COURT: Well, it is my proposal to proceed here with the 10 (1) matter and it seems to me that if the NLRB should prevail, the questions raised in that other



case would be moot, would they not?

MR. JAFFE: Yes, they would, your Honor, to a large extent.

THE COURT: It would simplify matters if we concentrate on this 10(1) action at this time. The others were notified to be here because they are involved, and if it is not settled with the NLRB, then we will proceed with the other.

I gather there is a motion in that Seatrain action for the union to compel arbitration, is that it?

MR. EPSTEIN: That is correct, your Honor.

THE COURT: That motion would be moot in that case; is there also a motion for preliminary injunction by the plaintiff?

MR. JAFFE: Yes, your Honor.

THE COURT: The issues are the same here that we are trying with this 10(1) action essentially.

MR. JAFFE: Not entirely. In my supporting brief I raise the question that there is no contract to arbitrate.

MR. SEHAM: Of course, your Honor, there are issues that go beyond the issues in this case in the other case. However, in terms of the practical relief that is being sought, namely, a halt of the injunction or, on the

other hand, proceeding with the injunction, disposition of the issues before you and before the Board are critical, so I would agree with you that certainly if you grant the Board's application, the other case would at least for the time being be moot.

MR. EPSTEIN: If your Honor please, the issues as to whether or not--

THE COURT: I don't want to discuss the issues right now. We are going to continue on Monday. I am just looking at something.

All right, two o'clock on Monday, gentlemen.

The witness is excused until 2:00 o'clock on Monday.

THE WITNESS: Thank you.

(Adjourned to December 9, 1974, at 2:00 p.m.)



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2 Sidney Danielson

3 v

4 International Organ-  
5 ization of Masters, etc.

74 Civ. 5254

6 Seatrain Lines

7 v.

8 International Organ-  
9 ization of Masters, etc.

74 Civ. 1983

10 New York, December 9, 1974  
11 Room 619 - 2:15 p.m.

12 - - -

13 (Proceedings resumed.)

14 - - -

15 (Appearances same as before with  
16 the exception of the absence of  
17 David Jaffe, Esq.)

18 - - -

19 THE COURT: Gentlemen, were you able to reach any  
20 stipulation with respect to any of the facts in this mat-  
21 ter?

22 MR. LONDON: Yes, your Honor, we have.

23 By way of introduction of certain documents that  
24 all the parties were able to stipulate, I think general  
25 counsel and petitioner would only have about another  
15 minutes of testimony, so that I can now introduce into  
evidence those documents that we stipulate to.

THE COURT: All right. Let us proceed to do

1 elbr 2

2 that.

3 MR. LONDON: I'd like to have this marked for  
4 identification as Petitioner's Exhibit 1.

xx 5 (Petitioner's Exhibit 1 was marked for  
6 identification.)

7 MR. LONDON: That is a copy of the dry cargo  
8 contract between MM&P and Seatrain Lines.

xx 9 (Petitioner's Exhibit 2 was marked for  
10 identification.)

11 MR. LONDON: Petitioner's 2 is the same contract  
12 covering the tankers MM&P and Seatrain Lines.

13 I'd like to mark this for identification as  
14 Petitioner's Exhibit No. 3, to wit, the April 17th demand  
15 for arbitration.

xx 16 (Petitioner's Exhibit 3 was marked for  
17 identification.)

18 THE COURT: You say petitioner's demand for  
19 arbitration?

20 MR. LONDON: Yes, the demand by MM&P pursuant  
21 to the provisions of the collective bargaining agreement.

22 As Petitioner's Exhibit 4, the September 18th  
23 demand for arbitration.

24 THE COURT: By whom?

25 MR LONDON: MM&P.



1 elbr 3

xx

2 (Petitioner's Exhibit 4 was marked for  
3 identification.)

4 MR. LONDON: As Petitioner's Exhibit 5, the appli  
5 cation for mortgage insurance by Langfitt Corporation.

xx

6 (Petitioner's Exhibit 5 was marked for  
7 identification.)

8 MR. LONDON: As Petitioner's Exhibit 6, the  
9 application of Tyler Tanker Corporation for mortgage  
10 insurance and loan insurance.

xx

11 (Petitioner's Exhibit 6 was marked for  
12 identification.)

13 THE COURT: Is there anything further?

14 MR. SEHAM: May we just check for a minute.

15 (Pause.)

16 MR. LONDON: At this point, your Honor, the  
17 parties agreed and stipulated, I would like to offer into  
18 evidence Petitioner's Exhibit Nos. 1 through 6.

19 MR. MARKSON: The respondent has no objection,  
20 your Honor.

21 THE COURT: All right. Let them be received.

xx

22 (Petitioner's Exhibits 1 through 6 were received  
23 in evidence.)

24 MR. LONDON: Your Honor, at this time I have an  
25 application that I be able to take out of order and have a

1 elbr 4

2 short five or ten minute direct examination of Mr. Overman,  
3 who is here on behalf of Westchester, because tomorrow, he  
4 informed me, he is going to be out of the country on  
5 business. So I was hoping I could take him out of order  
6 at his request and have a very short direct examination  
7 and then have him subject to cross examination and take him  
8 out of order if possible, because he did inform me it would  
9 be difficult, impossible for him to come here tomorrow.

10 THE COURT: Is there any objection?

11 MR. MARKSON: No objection.

12 THE COURT: All right.

13 You may step down.

14 (Mr. Hess stepped down.)

15 THE COURT: We will take this witness out of  
16 order.

17 P E R C Y O V E R M A N, called as a witness, being  
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. LONDON:

21 Q Mr. Overman, what is your present occupation?

22 A I am president of Westchester Marine Shipping  
23 Company, Inc.

24 Q In what business is Westchester Marine engaged?

25 A They provide crews for vessels, for steamships or



2 ships.

3 Q In a general sense can you describe what your  
4 present function as president of Westchester entails?

5 A Well, we have a memorandum, a contract, if you  
6 will, with several companies and we have, we provide those  
7 companies with crews for their vessels.

8 Q Are you familiar with the vessel known as the  
9 TT Brooklyn?

10 A Yes, I am.

11 Q What is the relationship, if any, between the  
12 Brooklyn and your company, Westchester?

13 A We have a contract with Anndep, for which we  
14 supply the officers and crew for that vessel.

15 Q What is your relationship with Anndep Shipping  
16 Corporation, that you just referred to?

17 A The only relationship is the contract that  
18 we have with them.

19 Q In your capacity of president of Westchester  
20 do you know whether Westchester is party to any collective  
21 bargaining agreements with any labor organization?

22 A Yes, it is.

23 Q Would you tell the Court and describe to the  
24 Court what those arrangements are and what those agreements  
25 are?

1 elbr 6 Overman-direct

2 A We have a collective bargaining agreement with the  
3 MEBA, with the SIU, and the ARA.

4 THE COURT: You will have to tell us what those  
5 initials stand for.

6 THE WITNESS: The Marine Engineers Beneficial  
7 Association, the Seamen's International Union, and the  
8 Marine Radio Officers Union.

9 Q With relationship to the Marine Engineers  
10 Beneficial Association, would you tell the Court what kind  
11 of employees are covered by said agreement?

12 A The deck and engine officers of the vessel.

13 Q Is there a collective bargaining agreement cover-  
14 ing the licensed deck officers employed by the TT Brooklyn?

15 A Yes, there is.

16 Q Who were the parties to that agreement?

17 A Westchester Marine and the Marine Engineers  
18 Beneficial Association.

19 Q Has Westchester, to your knowledge, ever had  
20 any collective bargaining agreement with the Masters,  
21 Mates & Pilots?

22 A No, they have not.

23 Q What is the corporate relationship, if any,  
24 between Seafair Lines and Westchester?

25 A There is no relationship, corporate or otherwise,



1 elbr 7 Overman-direct-cross

2 between Westchester and Seatrain.

3 MR. LONDON: I have no further questions, your  
4 Honor.

5 THE COURT: Any cross examination of this  
6 witness?

7 MR. MARKSON: Yes, your Honor, a few questions.

8 CROSS EXAMINATION

9 BY MR. MARKSON:

10 Q Mr. Overman, do you have your collective  
11 bargaining agreement with the MEBA with you?

12 A No, I do not.

13 Q What is the date of that agreement?

14 A I am sorry, I can't give you the exact date.  
15 I don't remember at this point.

16 Q Do you know when it starts or when it is supposed  
17 to end?

18 A Not offhand, I don't. I have several of them  
19 for different unions and I don't remember the exact dates  
20 on them.

21 Q You only have three agreement, is that correct?

22 A That is correct.

23 Q You don't remember as to MEBA, what its starting  
24 date is and what its termination date is?

25 A No, I don't.

1 elbr 8

Overman-cross

2 Q Do you know if it is an agreement with MEBA itself  
3 or with a district of MEBA?

4 A It is with MEBA District 2.

5 Q Is it your testimony then that every time you use  
6 the letters MEBA in your direct testimony and on cross-  
7 examination, you really meant District 2 of the MEBA?

8 A In the case of the TT Brooklyn, yes, sir.

9 Q Do you have a special agreement for the TT  
10 Brooklyn?

11 A No, but we have the MEBA District 2 for the  
12 Brooklyn.

13 Q Is this part of a general agreement that you have  
14 with District 2 or MEBA?

15 A I don't understand about the terms general.

16 Q Do you have a collective bargaining agreement  
17 with either District 2 or with MEBA covering generally  
18 all ships where you furnish officers, either deck or  
19 engine room or both?

20 A Not a general agreement, no, sir.

21 Q What do you have it, on a ship-by-ship basis?

22 A Yes, sir. It is on a company-by-company basis,  
23 not a ship-by-ship.

24 Q What do you mean by that?

25 A Well, we represent several companies, which I



1 indicated, at the present time I believe there are three  
2 separate companies involved, and the contract has been  
3 for us representing those companies.  
4

5 Q In other words, you are the labor contractor?

6 A If you will, sir.

7 Q For these three companies?

8 A Yes, sir.

9 Q And do these three companies each own at least  
10 one vessel apiece?

11 A At least one vessel, yes, sir.

12 Q Are there more than one?

13 A Yes, sir, there are more than one with each  
14 company.

15 Q Let me return to my question again. How many  
16 agreements do you have, how many collective agreements do  
17 you have with either District 2 or MEBA concerning either  
18 deck or engine officers?

19 A We have one agreement with 2 District.

20 Q And that applies to which company?

21 A To the -- it applies to Westchester Marine  
22 Shipping Company and its relation to the TT Brooklyn and the  
23 shipping coming out, the Williamsburg.

24 Q Are those ships named as such in these collective  
25 agreements?

1  
2  
3 A I am sorry, I don't remember whether they are  
4 specifically named or not.

5 Q Did you negotiate these agreements with District  
6 2?

7 A They were really not negotiated. I did make all  
8 the arrangements for them. We took a standard tanker agree-  
9 ment. However, we did not negotiate from the standard tanker  
10 agreement.

11 Q In addition to this, of course, you have another  
12 agreement with MEBA covering the engine room personnel?

13 A No, sir, there is one agreement and it includes  
14 the engine and deck officers.

15 Q I think we misunderstood each other. In addition  
16 to the agreement you have with District 2 do you have another  
17 agreement with MEBA covering your relationship with other  
18 companies and otherships, then the Brooklyn and the  
19 Williamsburg?

20 A We have a contract with MEBA District 1.

21 Q Is that a contract for engine room officers  
22 only?

23 A No, that is for engine and deck officers.

24 Q With who, sir, did you make your agreement to  
25 furnish labor for the Brooklyn? With which other



company?

A I am sorry, I don't quite understand what you mean.

Q Let me withdraw the question and rephrase it.

Did you make an agreement with any other firm whereby you undertook to provide labor for the vessel?

A Yes, sir. With Anndep.

Q Do you have that agreement with you?

A No, sir.

Q What are you paid, on a cost plus basis?

A It is on a fee basis -- well, it is a cost plus, if you will. It is a fee plus certain additional expenses incurred.

Q Who is Anndep?

A Well, to be honest, I don't know who Anndep is exactly. I made my agreement with Captain Leo Burger, and he signed the contract for Anndep and I signed it for Westchester Marine. I don't know their corporate structure or relationship.

Q Have you ever had any dealings with Anndep prior to this particular occasion?

A No, sir, none.

Q When was this contract made?

A It was made some time, I believe, in 1974, early, or late 1973, but again, I don't remember the exact

1 elbr 12 Overman-cross

2 date of it.

3 Q Where is Anndep located?

4 A They are located in Lake Success, New York,  
5 so far as I know.

6 Q Do you have an on-going relationship with them  
7 now?

8 A Yes, I do.

9 Q Is that the place you communicate to?

10 A That is correct.

11 Q Have you had any other relationship or dealings  
12 with this Captain Burger?

13 A Yes, I have.

14 Q Who is Captain Burger, do you know?

15 A Yes, he is a steamship operator.

16 Q You mean he owns vessels?

17 A He owns vessels, he operates vessels, he charters  
18 vessels.

19 Q He is in the shipping business?

20 A Yes.

21 Q Dry cargo or tanker or both?

22 A Insofar as I know, he is in both, but I am not  
23 totally familiar with his operation. I am not sure that he  
24 has any dry cargo vessels at this point.

25 Q Did you ever hear of East River Steamship



Corporation?

A Yes, sir, I have heard of it.

Q What do you know about East River Steamship Corporation?

A Absolutely nothing.

Q How have you heard about that corporation?

A I just heard about it in conversation, but I have no idea of the structure. I am not even sure really what East River does.

Q Have you any contractual relationship with East River Steamship Corporation?

A No, sir, none whatsoever.

Q How many employees do you have in connection with the TT Brooklyn?

A Do I have?

Q Yes.

A Through Westchester Marine, you are referring to?

Q Yes.

A Well, we have the crew of the vessel.

Q How many employees is that?

A That is -- to be perfectly honest, I am not positive, but I believe there are 28 or 29 men on there, I am not sure of that, on that particular ship.

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Overman-cross

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Q Does that include officers too?

A Yes, I know what it is on the other ships.

I don't recall what it is on that particular ship, the  
manning scale.

Q 28 or 29, though?

A I believe that is the manning scale on there.

Q Were there any employees with respect to the  
Williamsburg?

A We have just started employing the men for that.  
I have seen the bills on it. But I don't know exactly who is  
on board the ship at this point.

Q Is it a full complement at this point?

A I don't believe so, but I am not sure.

THE COURT: Excuse me. I don't understand the  
relevance of all this to anything I have to determine.  
Do you want to tell me what the relvance is, Mr. Markson?

MR. MARKSON: I am not quite sure what your Honor  
means about all of this. Your Honor means about the  
questions about the managing of the vessel?

THE COURT: Yes. I am getting lost here. What  
is the relevance of all this, the number of employees,  
etc.?

MR. MARKSON: Well, there are allegations in the  
petition that Westchester employees certain employees



1 with respect to its vessel and the operatio of the vessels,  
2 and I want to find out from Mr. Overman how many employees  
3 there were on each of these two vessels. Paragra 5 on  
4 page 4.  
5

6 (Pause.)

7 THE COURT: All right.

8 You may proceed.

9 MR. SEHAM: If your Honor please, I'd like to  
10 object to the line of questioning, because if you look at  
11 the allegations in the complaint or in the petition, the  
12 allegations are confined to the representation that there are  
13 in fact MEBA represented officers on board these vessels,  
14 and I think as far as the relevance to this case, Mr. Overman  
15 has testified that that exists, the relevance of the  
16 numbers of other crafts or classes simply escapes me, and  
17 I think the testimony has already established that there is  
18 another collective bargaining agreement for the same  
19 group of people that are represented by Mr. Markson. That  
20 is the beginning and the end as far as factual presentation.

21 BY THE COURT:

22 Q How many are officers of the men you have provided  
23 to the TT Brooklyn?

24 A 9 per vessel, your Honor. Counting the radio  
25 officer or the radio operator?

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Overman-cross

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MR. MARKSON: That is one person.

THE WITNESS: One person.

THE COURT: All right.

You may proceed.

BY MR. MARKSON:

Q Is your relationship to furnish the personnel for the Williamsburg also with Anndep?

A Yes, it is.

Q And it is essentially the same basis that you described in your answer to prior questions with respect to the Brooklyn, is that correct?

A Yes, sir.

Q Is this in one contract that you have with Anndep with respect to the Williamsburg and Brooklyn or is it one contract?

A One contract.

Q Can you tell us whether or not that contract is terminable?

A Yes, it is terminable.

Q On what basis is it terminable?

A As best as I recall, it has a cancellation clause in it, cancellable by either party, and I believe the terms are 60 days, or upon notice of 60 days it is cancellable.



Q For any reason?

MR. LONDON: Your Honor, I object to this line of questioning. I couldn't understand the relevance or materiality of this line of questioning.

THE COURT: What is the relevance?

MR. MARKSON: The relevance, your Honor, is that we are dealing with a situation where the respondent has a clause in its contract that deals with a broad subject of work preservation. In fact, one aspect of the permissibility of this kind of clause deals with the doctrine of work preservation, and I simply want to inquire of this witness, who is the man who furnishes the personnel for the two vessels that are involved as to whether or not his collective agreement has any kind of a -- has any capacity to be terminated so that we may determine who and to what effect the work preservation clause in the Masters, Mates & Pilots agreement may affect these ships.

THE COURT: Did you have something to say?

MR. SEHAM: Your Honor, I simply don't see how the existence of the contract with the other union affects the work preservation argument that they may not have here, so long as that contract exists and there is no denial that it is a valid and ongoing contract, it seems to me that is the end of the issue. The only reason why this witness was

presented was to show that in fact the transactions that we are talking about were consummated transactions going to unrelated companies to Seatrain Lines. I think that fact has been demonstrated by what Mr. Markson is trying to show beyond the scope of the direct evidence, escapes me in terms of the case.

THE COURT: Have you concluded?

MR. MARKSON: Yes, I have no further questions of this witness.

THE COURT: Any redirect?

MR. LONDON: No, your Honor.

THE COURT: Thank you.

You may come down.

(Witness excused.)

THE COURT: Mr. Hess, would you resume the stand, please?

C H A R L E S J. H E S S, resumed.

CROSS EXAMINATION CONTINUED

BY MR. MARKSON:

Q Mr. Hess, how long have you been an officer of Seatrain?

A Seatrain Lines you are speaking of?

Q Yes.

A Since 1965, '66.



1  
2 Q How long, all told, have you been employed by  
3 the company?

4 A Are you speaking of Seatrain Lines? I don't --

5 Q Let me broaden it and ask you the question, how  
6 long have you been with Seatrain Lines and/or its sub-  
7 sidiaries or affiliates?

8 A Since about 1954, 1955.

9 Q How long have you been an officer of either  
10 Seatrain Lines or any of its affiliates?

11 A About 1954, 1955.

12 Q And then an officer of the principal company  
13 since 1965 or '6, you said?

14 A '65, '66.

15 Q You have testified in your direct examination  
16 concerning the organization of Seatrain Lines into three  
17 principal divisions. One you described as a containership  
18 division, another a tramp ship division and then ship-  
19 building as a third division, is that correct, sir?

20 A Yes.

21 Q Aside from the shipbuilding part of it, would you  
22 say that all of the retained activity of Seatrain Lines  
23 deals with the operation of shipping companies and the  
24 operation of ships?

25 MR. SEHAM: I object to the form of the question.

1  
2 I think the proper form would be to ask him what is done  
3 in the other divisions, what the functions and duties of the  
4 other divisions are.

5 MR. MARKSON: On cross examination, your  
6 Honor, I think I am provided the leeway of posing the question  
7 in a leading fashion.

8 THE COURT: Yes, proceed. Would you repeat the  
9 question, please.

10 Q Will you describe, Mr. Hess, the activity of all  
11 the companies other than the shipbuilding company, that is,  
12 engaged in the business of shipping goods by sea?

13 A Certain parts of it, yes. I am not trying to  
14 be facetious or that, but that is a broad question.  
15 You have the container division, there are some places where  
16 you ship it overland by truck, and like that.

17 Q Isn't each of the related companies and Seatrain,  
18 the subsidiary companies, aside from the shipbuilding  
19 company, a shipping company?

20 A I would say shipping or related --

21 Q Related to shipping?

22 A Yes.

23 Q And they own many vessels, don't they, these  
24 companies?

25 A Yes.



1  
2 Q In the container division, about how many vessels  
3 would you say are owned?

4 A One.

5 Q And how many vessels are operated, sir, in the  
6 container division?

7 A About 10.

8 Q In the tramp ship division, about how many vessels  
9 do you own?

10 A Say approximately 7 now.

11 Q How many other vessels are operating in the tramp  
12 ship division?

13 A Approximately ten.

14 Q Would it be correct to say, sir, that with re-  
15 spect to every one of these 8 vessels owned but 20 vessels  
16 operated, the deck officers are governed by collective  
17 bargaining agreements with the Masters, Mates & Pilots?

18 MR. SEHAM: I object to that question. He was  
19 not tendered for that or for an expert on the collective  
20 bargaining agreement.

21 THE COURT: If he knows.

22 A All of the American Flag vessels, yes.

23 Q Of the 8 ships owned by Seatrain and the 20 oper-  
24 ated, are they all American Flag vessels?

25 A No.

Q Can you tell us how many of those vessels which you own are American Flag vessels?

A Approximately 7.

Q And of the 20 vessels that you operate, how many of those are American Flag vessels?

A Three -- four, excuse me -- just a moment, now. Seven are chartered American Flag.

Q Rather than 4, you mean?

A Yes.

Q 7 owned and 7 operated --

A No, I said 7 chartered.

Q When you say chartered, you mean you are operating for someone else?

A No, they are bareboat charter. We are operating for our own account.

Q Mr. Hess, I show you Petitioner's Exhibit 5 and I ask you whether or not the original which was dated May 19, 1969, contained your signature? That one doesn't have any signatures at all.

A Yes it did.

Q And likewise, I show you Petitioner's Exhibit 6, it has two pages dated June 16, 1972 and I ask you whether or not the originals had your signature on them.

A They did.



1  
2 Q The purpose of Exhibit 5 was to obtain mortgage  
3 insurance from or under the provisions of Title 11 of the  
4 Merchant Marine Act of 1936 as amended to aid the construction  
5 and financing of a 225 ,000 ton tanker to be used in domestic  
6 and/or foreign oil trades, is that correct, sir?

7 A That is correct, yes.

8 Q And the purpose of the application, Exhibit 6,  
9 looking at the face of it again, under "purpose" was exactly  
10 the same, wasn't it, sir?

11 A I don't recall. If you will read paragraph 24.

12 Q Isn't correct to say that the purpose of the  
13 application, Exhibit 6, was to aid in the construction and  
14 financing of a 225,000 ton tanker to be used in the foreign  
15 commerce of the United States in the carriage of petroleum.

16 A That is correct, sir.

17 Q Mr. Hess, I refer you to Petitioner's Exhibit 5,  
18 the application of Langfitt Shipping Corporation, and I refer  
19 you to the top of page 5 where there is a description of the  
20 applicant, Langfitt, in these terms "While the applicant  
21 is a relatively new corporation its parent company,  
22 Seatrain Lines, Inc., together with its subsidiaries, has been  
23 engaged in the oil and grain trade on a worldwide basis  
24 in the container field between New York and Puerto Rico and  
25 in the carriage of military cargo between the U.S. West

and the Far East."

I ask you, sir, is that a fair and accurate statement of the facts at this time?

MR. LONDON: Your Honor, at this time I'd like to object to this line of questioning. We have most of this in evidence, and the document speaks for itself.

THE COURT: What do you say to that?

MR. SEHAM: May I add, your Honor, we will stipulate to the accuracy of the facts in the application as of the date the application was filed.

MR. MARKSON: I will accept counsel's word that all of the facts stated in the stipulation, both Exhibit 5 and Exhibit 6, are accurate.

THE COURT: All right. Let us proceed.

MR. MARKSON: Do you stipulate, Mr. Seham?

MR. SEHAM: I think as of the time they were filed.

MR. LONDON: These documents were never in my control. I stipulate based on counsel's representation that they reflect the corporations as of that time.

Q Mr. Hess, I refer you now to Petitioner's Exhibit 5, the paragraph denominated D appearing on page 8. Where there is a statement which begins with the words "Applicant proposes to have its related company, Hudson Waterways



Corporation as operating agents of the vessel, and then goes on.

That is the end of the portion I am going to read to you. What that the intent of Langfitt Shipping at the time it filed the applies in 1969?

MR. SEHAM: Again I object, your Honor, simply for the sake of time because we did in fact stipulate as to the accuracy with respect to the representation and that represents that one as of the date of filing.

THE COURT: Yes, I don't see the purpose of this. They concede that whatever that says, it is accurate as of the time.

MR. MARKSON: He signed the document, your Honor. He is a corporate officer.

THE COURT: Yes, he is bound by it. I don't see the purpose of it.

MR. MARKSON: It is bound up in the next few questions. In fact, I will ask him the next question.

MR. SEHAM: We just want to move on, your Honor.

MR. MARKSON: I will assume that the stipulation would have been the answer of the witness.

THE COURT: The stipulation would have been the answer of the witness?

MR. MARKSON: The statement made by Mr. Seham.

2 THE COURT: That this was correct at the time, is  
3 thit what you are getting at?

4 MR. MARKSON: Yes.

5 Q Is that a fair reflection of the company at that  
6 time, in 1969?

7 THE COURT: You are asking him if what is stated  
8 in the document is a fair reflection?

9 MR. MARKSON: That is correct.

10 THE COURT: Isn't the document signed by the  
11 company?

12 MR. MARKSON: The document is signed by the  
13 company, with Mr. Hess and its secretary treasurer.

14 THE COURT: That should be the end of it,  
15 shouldn't it?

16 MR. MARKSON: I don't know if it is or isn't.

17 MR. SEHAM: It is all right with me if Mr. Hess  
18 answers.

19 THE COURT: All right.

20 A I would say on the basis of this document you  
21 are submitting an application, it is primarily a formal-  
22 ity. You have to name in the application forms, you have to  
23 name an operating agent. As a formality to get the financing,  
24 either arranged for the vessel and the wherewithal to  
25 build it, you would make certain things. But as business



considerations come later on it would be subject to change.

Q In 1969 was it the intention of Seatrain to have the vessel to be constructed by Langfitt, or for Langfitt Shipping Corporation, as to which Exhibit 5 applies, have this vessel operated by a related company, Hudson Waterways Corporation?

A If we had operated for our own account.

Q Wasn't it your intention in 1969 to operate for your own account?

A Yes.

Q That is what you told the Maritime Administration is that correct?

A Yes.

Q And when you told that to the Maritime Administration and you said that the operating personnel and union affiliations were all on file, you understood that the Maritime Administration knew that the licensed deck officers would be related by the Masters, Mates & Pilots, isn't that correct?

A That is correct.

Q Was this application part of a policy and program of Seatrain's to upgrade the lines that it had, the ships that it had?

A No.

Q You had no rebuilding and rejuvenation program, you had no policy developed to retire older vessels and put into service newer ones?

A When are you speaking of?

Q I am talking from the vantage point of 1969.

A Not that I know of.

Q When it came to the application with respect to the second ship, the application of Tyler Tanker Corporation, as evidenced by Petitioner's Exhibit 6, dated June 16, 1972, I refer you to page 10 and ask you if you would look at it and tell me whether or not it was your intention in 1972 to have the vessel to be constructed for Tyler Tanker Corporation operated by Hudson Waterways Corporation, a subsidiary of Seatrain?

A Yes, it was.

Q The vessel that is referred to in Petitioner's Exhibit 6 ultimately came to be named the Williamsburg, isn't that correct, sir? This is the Tyler Tanker Corporation?

A That is correct.

Q And the vessel referred to in Exhibit 5, which is the Langfitt Shipping Corporation application ultimately came to be the Brooklyn, isn't that correct, sir?

A That is correct.



Q Can you tell me, sir, when it is that a decision was made not to have the Brooklyn operated by an in-house corporation or shipping company, but to dispose of it outside to some other company?

A I don't know the specific date but it was some time prior to the completion of the vessel.

Q Would you say, sir, that it was after you made the application with respect to the Williamsburg in June of 1973 that you came to the conclusion that it should be the first vessel, the Brooklyn, should be disposed of?

A I would say yes.

Q Was that related to economic reasons, such as losses in the container trade?

A I would say basically it could be the various economic conditions.

Q Would you say it was lost in container trade and competition on the North Atlantic run, spiraling costs, lateness in rate increases, and massive dollar devaluation, all bound together had to do with the making of the decision?

A Well, you look at the whole worldwide condition at that time, the entire shipping industry at that time, it could be true statements.

Q Did there reach a point of time, Mr. Hess,

when Seatrain decided to trade in some vessels to the Maritime Administration so that it could raise some capital for the construction of a second vessel, the Williamsburg?

A That is correct, yes.

Q Was this purely for economic reasons or was it part of a program of upgrading the quality of the fleet?

A Let us face it, at that time if you had to follow the same route as Langfitt, we didn't have the cash, and the only way was to turn in vessels.

Q Would it be a fair statement to say, Mr. Hess, that if the two vessels, Brooklyn and Williamsburg had ultimately been operated by Hudson Waterways, as you stated was your intention in each of the two applications of 1969 and 1972, there would have been no loss of jobs to licensed deck officers represented by the MEBA?

MR. SEHAM: I object. It is argumentative.

MR. MARKSON: I withdraw the last question.

MR. SEHAM: We are going to have summations later on --

MR. MARKSON: Pardon me?

MR. SEHAM: I am sorry. I withdraw the remark.

Q Hudson Waterways Corporation was a wholly-owned subsidiary and is a wholly-owned subsidiary of Seatrain Lines?



A Yes.

Q Are you familiar with the collective bargaining agreement between the Maters, Mates & Pilots and Seatrain Lines?

A No.

Q Have you ever seen the agreement?

A Well, many years ago.

Q I show you, Mr. Hess, Petitioner's Exhibit 1, and turn to the last page where there are signatures, and ask you if you could identify the two signatures on the company side.

A C.Y. Bracco.

Q That is his signature, sir?

A Yes.

Q Who is he?

A He is vice-president of Hudson Waterways Corporation.

Q Is he an officer of Seatrain Lines?

A No.

Q This signature at the bottom?

A Samuel Kahn.

Q Who is he?

A He is the president of Hudson Waterways Corporation.

Q Is he an officer of Seatrain Lines?

A I am not trying to be facetious, again; are you speaking now, or --

Q No, in June of '72.

A Yes, I think he was executive vice-president, if not, he was a vice-president of Seatrain Lines.

Q I show you Petitioner's Exhibit 2, and again on the company side, is that Mr. Bracco's signature?

A Yes.

Q It is the same Mr. Bracco you testified to?

A Yes.

Q With respect to Petitioner's Exhibit 1?

A Right.

Q Is it fair to say that if Seatrain had caused the vessel to be constructed under the Langfitt application, Petitioner's Exhibit 5, to be operated by Hudson Waterways, there would have been no loss of jobs to any licended deck officers represented by the MM&P?

MR. SEHAM: I object, your Honor. It is argumentative and beyond the scope of his submission as a witness.

MR. LONDON: I join in the objection.

THE COURT: Let me hear the question.

(Question read.)



THE COURT: Objection sustained.

Q I ask you, sir, would it have been fair to say tha- if the vessel to be constructed under Petitioner's Exhibit 6, the Tyler Tanker operation, had been operated as you stated it was your intention at the time of the application to operate, there would have been no loss of jobs with respect to any licensed deck officers represented by the MM&P.

MR. LONDON: I object to that on the same grounds.

THE COURT: Sustained.

Q Did there come a time when you did in fact trade in vessels to the Maritime Administration after filing the Petitioner's Exhibit 6 in June of 1972?

A Yes.

Q How many such vessels were traded in to the Maritime Administration?

A In June of '72, it is 9.

Q And subsequent to that period did you trade in any more?

A I am trying to get chronological order. In June of '73, five more.

Q And between June of '72 and today, is that the totality of trade -ins to the Maritime Administration?

1  
2 A Yes.

3 Q Were any of these vessels that were so traded  
4 in chartered back to you to operate?

5 A Yes.

6 Q How many, sir?

7 A All of them.

8 Q Are they all operating now?

9 A No.

10 Q How many of these 14 are operating?

11 MR.LONDON: Your Honor, I am going to object  
12 to these questions because I don't see what relevance this  
13 line of questions has to do with the relevance to the  
14 case before us.

15 THE COURT: What is the relevance?

16 MR. MARKSON: I think these are very relevant,  
17 your Honor. I think this goes to the whole purpose and  
18 intent of what the union was trying to do with the  
19 collective bargaining agreement, they were preserving the  
20 work of the licensed deck officers represented by the  
21 respondent.

22 THE COURT: We have only two vessels involved  
23 here, the Williamsburg and the Brooklyn. Do you have some  
24 others?

25 Isn't that what the case involved?



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2  
3 MR. MARKSON: If I may represent to you now  
4 that there will be testimony on the part of the respondent  
5 that there are a vast number of vessels involved, that it  
6 has to do with a total pool of vessels represented by  
7 the Masters, Mates & Pilots, of which these are just an  
8 integral part, and I am looking to elicit testimony from  
9 this witness as to the fact that this company had retired  
10 certain vessels from the operation of its fleet, thereby  
11 thereby retrenching the pool of valuable jobs for  
12 licensed deck officers.

13 MR. SEHAM: Your Honor, our understanding  
14 of the case is that it involves the question as to whether  
15 a ship building corporation which is a subsidiary of a  
16 ship operating company has the right to sell two of the  
17 ships that it has constructed to parties who seek to buy it,  
18 regardless of those parties' union affiliation.

19 With respect to the operating companies, the  
20 seagoing companies, there is no dispute as to the applicable  
21 labor agreements and the coverage of those labor agree-  
22 ments. The case is restricted and confined to the ship-  
23 building corporation's constructions and its right to  
24 sell those ships to whomever it so pleases. That is the  
25 sole issue before the Court.

THE COURT: That involves the two ships named

here, is that right?

MR. SEHAM: That's right, your Honor. As far as the coverage of the other ships is concerned, it has nothing to do with the issues before the Court.

THE COURT: I would think so.

MR. MARKSON: First of all, if it is the contention of the government and Seatrain that the case revolving around the sale by Seatrain Shipbuilding, then we might as well leave at this point with a dismissal, because this witness has testified already on cross examination that there was no sale by Seatrain Shipbuilding. There was nothing for Seatrain Shipbuilding to sell.

MR. SEHAM: That is not right.

MR. MARKSON: The only thing available to sell were contracts which Langfitt had and Tyler Tanker had. There is no transaction between Seatrain Shipbuilding and any other party on the orders.

MR. LONDON: He already testified that title passed between Seatrain Shipbuilding and GECC Corporation for the Brooklyn and the Williamsburg.

MR. MARKSON: That is a misstatement of the record, your Honor.

He testified that what happened was that Langfitt sold whatever rights it had to a third party



and Tyler Tanker sold whatever rights it had to some third party. There is nothing that passed between Seatrain Shipbuilding.

MR. SEHAM: The only thing that passed is title. Of course as Mr. Hess has testified and as appeared before the court, an effort is made for financial reasons to insulate the resources or the assets involved in any single construction. What happened, and what Mr. Hess has testified to is that in one case, in effect a shell Corporation, Langfitt, held the construction contract. Shipbuilding was building the ship. At the time of the closing two things happened. No. 1, shipbuilding transferred title to the buyer; No. 2, Langfitt or the shell, assigned its contract right to the buyer. In a sense there was a conveying of both legal and equitable titles to the buyer. A simple -- not simple, but a huge and very complex, but very understandable transaction. As the documents show, and I am not testifying, because it is in the record, Langfitt and Tyler did not own any ship before, they were not in the ship operating business or anything else. This is very clear on the basis of the documents Mr. Markson himself introduced. These were shell corporations designed just for the purpose I have described. The case is in fact confined to the issue of whether a

1 shipbuilding corporation can sell ships that it builds to a  
2 purchaser that comes along with the right money at the right  
3 time, and that is what's happened.

4  
5 MR. MARKSON: I have introduced enough docu-  
6 ments, although I did call for some --

7 MR. SEHAM: The documents I am referring to  
8 are the documents you cross examined him on, namely, the  
9 insurance application form.

10 MR. MARKSON: Petitioner's 5 and 6 I will say  
11 were produced by the National Labor Relations Board at my  
12 request --

13 THE COURT: All right, gentlemen. The question  
14 before the witness related to other ships owned by the  
15 company and the contract the company has with the respondent  
16 union regarding those other ships, and as counsel for  
17 Seatrain has pointed out, that is not before us here.  
18 What is before us is what happened with respect to these  
19 two vessels referred to in the regional director's complaint.

20 MR. MARKSON: If I may be heard just a moment  
21 more on this question, your Honor, it is going to be  
22 our contention in the collective bargaining agreement,  
23 Exhibits 1 and 2, are simply individually assigned, but  
24 industry-wide agreements, and that there are uniform  
25 agreements throughout the entire industry, and that when



1 we talk about available jobs for the licensed deck officers  
2 we are talking about the available pool of jobs in an  
3 industry which is nation-wide in scope. And it is part  
4 of the contention of the respondent in this case that  
5 they have a right to preserve the work of these employees,  
6 of these deck officers, I should say.  
7

8 THE COURT: I don't think anybody disputes  
9 that or what you have said thus far.

10 MR. MARKSON: That is part of their right to  
11 protect the work and in doing so they have a right to enter  
12 into certain arrangements in their agreements with the em-  
13 ployers.

14 THE COURT: What is your contention with respect  
15 to these two vessels? Maybe that will help to clear it up.  
16 What is your contention with respect to the Brooklyn and the  
17 Williamsburg?

18 MR. MARKSON: I am afraid I don't understand.

19 THE COURT: What is your contention with respect  
20 to those two?

21 MR. MARKSON: Our contention is that it was  
22 perfectly proper for the union to enter into contracts with  
23 Seatrain covering its affiliates and subsidiaries and  
24 related company, that had certain effects in preserving  
25 the work of licensed deck officers that are represented by

1 the union. Our contention is that the collective agreement  
2 does no more than preserve the work or attempt to preserve  
3 the work, and that the clauses in question and which are  
4 in issue in this case are one aspect of the preservation of  
5 the work. Our contention has a broader scope than just  
6 these two vessels, that when this particular company entered  
7 into the collective agreement, it was obligating itself to  
8 do certain things with respect to preserving work of ships  
9 officers, licensed deck officers, and that the union had  
10 every right in which to seek enforcement of those clauses  
11 through arbitration, the way they did it.

12 THE COURT: That is much too vague, Mr. Markson.  
13 What is your contention with respect to what happened with  
14 respect to these two vessels?

15 MR. MARKSON: Our contention is that it was  
16 perfectly lawful for the union to make a demand to  
17 arbitrate the issue as to whether or not the Seatrain  
18 Lines, Inc. and its subsidiaries and affiliate companies  
19 breached the contract in selling in one case and in  
20 making a commitment to sell, in the other case.

21 MR. SEHAM: If I can be heard for ten seconds  
22 only. The broader issue which Mr. Markson addresses  
23 himself was decided and rejected by the Second Circuit  
24 Court of Appeals about 12 months ago in NLRB v. National  
25



1 Maritime Union, 486 F. 2d 907, where they rejected the  
2 notion that a maritime union has the right to preserve this  
3 industry-wide jurisdiction, that it has some right to a  
4 continuing pool of ships. This case goes one step further  
5 and goes one step further against Mr. Markson's contention,  
6 because this is a case not in which a seagoing company,  
7 an operating company wishes to sell ships on which people were  
8 previously working, but this is a situation in which a  
9 shipbuilding corporation, and no matter how Mr. Markson  
10 slices it or stands on his head or talks about it, the  
11 plain fact of the matter is that no MM&P officers, nobody  
12 ever worked on these vessels as ocean-going vessels prior to  
13 the time that their title was transferred to an independent  
14 purchaser. So that even if Mr. Markson could begin to make  
15 a case on the same grounds that were rejected by the  
16 Second Circuit, he falls off that case because as you  
17 quite correctly put your finger on, what we are talking about  
18 is these two ships and these two ships never had any MM&P  
19 people on board.  
20

21 THE COURT: What do you say to that, Mr.  
22 Markson?

23 MR. MARKSON: He is quite right, there were  
24 no MM&P physically on board.

25 THE COURT: Is it your contention that they sold

1  
2 it to a subsidiary other their own rather than to an  
3 independent company?

4 MR. MARKSON: No, I make no such contention.

5 THE COURT: And what is your contention?

6 MR. MARKSON: It is two-fold.

7 We contend that the union has a right to make a  
8 collective agreement with this employer, Seatrain, and all  
9 the others in the industry, in the shipping industry  
10 uniformly, to help to preserve the work of licensed deck  
11 officers. That is our fundamental contention. Our  
12 contention is that implementation of that the union has  
13 a right to seek arbitration with respect to this particular  
14 employer, Seatrain, on a claim that it, namely Seatrain,  
15 had breached the collective agreement in making a sale  
16 outside the industry to a firm that is not represented by  
17 the Masters, Mates & Pilots. That puts it in a clear  
18 nutshell. We are -- I think that Mr. Seham is wholly  
19 incorrect when he says that it was the shipbuilding company  
20 that made any kind of sale.

21 I am not slicing up anything. The shipbuilding  
22 company was no more than a contractor, it was a builder, it  
23 wasn't hiring people to do anything but to construct  
24 ships. The owner, if you will, the contracting right,  
25 if you will, were two other companies, Langfitt and Tyler



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Tanker. It was these companies that had the transaction with the third parties. As a matter of fact, I have asked Mr. Seham to produce for us the various documents of agreement involved, and he has produced for me a participation agreement dated December 1, 1973 in which Seatrain Shipbuilding Corporation is identified in the contract itself as the builder, and nothing else but the builder; and that it was working under a construction contract made back in April of 1969.

MR. SEHAM: That is how these are built.

MR. MARKSON: I would ask that this be marked for identification, please.

THE COURT: I don't understand Mr. Seham to disagree with that, that they were the company that built this. The question is whether they had the right to sell it when a buyer came along, as I see it. Is that it?

MR. SEHAM: That is exactly right, your Honor.

MR. MARKSON: No, it isn't.

MR. SEHAM: There is no question that Seatrain Shipbuilding built. There is no question that Langfitt had a construction contract. There is no question that Langfitt did not have legal title. There is no question but that --

MR. MARKSON: Legal title to what?

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MR. SEHAM: To what was under construction,

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the hull, or anything else. There is no question but

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that at the time of the sale to GECC and Wilmington, two

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things happened: The construction contract was assigned and

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the legal title which must have resided in the entity that had

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physical possession, because nobody else had, both of those

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indicia of ownership were transferred to GECC. And I put

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it to you, your Honor, that if even Langfitt is somehow

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involved in this proceeding as a title holder, what have

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you; it doesn't make any difference at all, because what

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we are talking about is the right of an entity, it could

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be a dual entity, to build a ship and sell it. All the

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issues of work preservation, which are laudible objectives

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if they are within the law, have been decided in this

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case and have been decided by the Second Circuit, and the

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only way that Mr. Markson can get out of that advantage

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or commerce decision is to show that this is in some way

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different, and the difference, I submit to you, cuts against

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him but in this case unlike that case, there were never

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MM&P seamen aboard these vessels.

22

I don't see where we go. Certainly on the work

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preservation, I understand he has other arguments he may

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wish to submit to you, but I submit to you that on the work

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preservation issue, on the permissible scope of work



2 preservation, there is no substantive issue before the  
3 courts.

4 (Respondent's Exhibit A was marked for  
5 identification.)

6 MR. MARKSON: The whole argument with that is  
7 that the one firm that is not a party to this participation  
8 agreement, happens to be Seatrain Shipbuilding Corporation.  
9 They aren't even a party. They didn't sell anything.  
10 It is your document, Mr. Seeham, you gave it to me just  
11 before court opened today.

12 THE COURT: Wait a minute, now. Let us clarify  
13 the difference between these corporations with the name  
14 Seatrain. We have one which is a construction company  
15 and the other is called what?

16 MR. SEHAM: Seatrain Lines, Inc.

17 MR. MARKHAM: Which is the conglomerate, for lack  
18 of a better work.

19 THE COURT: And the contract which the respond-  
20 ent has is with Seatrain Lines, is that it, as opposed to  
21 the construction company or the shipbuilding company?

22 MR. SEHAM: The labor agreement is with Seatrain  
23 Lines.

24 MR. MARKSON: And Hudson Waterways and several  
25 other named companies as well as all other subsidiaries and

affiliates.

MR. SEHAM: There are some 2500 employees --

THE COURT: Seatrain Shipbuilding is a subsidiary of Seatrain Lines, is that it?

MR. SEHAM: That is correct, your Honor.

Your Honor, I might tender to you a description of Seatrain Shipbuilding Corporation, which I know the adversary counsel already have, but it is in part of the papers on the other cases.

THE COURT: Let us mark it.

(Petitioner's Exhibit 7 was marked for identification.)

THE COURT: This describes the various companies, is that it?

MR. SEHAM: This describes the Seatrain Shipbuilding Corporation operation. I think we can also get an annual report for you.

THE COURT: Any objection to this?

MR. MARKSON: I haven't seen it yet, your Honor.

THE COURT: He said that he gave it to you (handing).

(Pause.)

MR. MARKSON: No objection, your Honor.



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2 THE COURT: All right, let it be received.

3 (Petitioner's Exhibit 7 was received in

4 evidence.)

5 MR. SEHAM: Here is a copy also, your Honor, again  
6 which is in the file in this case and which Mr. Mark has,  
7 of the annual report of 1973 of Seatrain Lines, Inc. And that  
8 will contain reference to all of the subsidiary corporations  
9 and a general description of what the multifarious business  
10 activities are.

11 (Petitioner's Exhibit 8 was marked for  
12 identification.)

13 THE COURT: Any objection to 8? Do you have  
14 a copy of it?

15 MR. MARKSON: Is that the '73 annual report?

16 MR. SEHAM: Yes.

17 MR. MARKSON: No, I have seen that.

18 THE COURT: All right. Let it be received.

19 (Petitioner's Exhibit 8 was received in  
20 evidence.)

21 THE COURT: In any event, I gather we have now  
22 lost the question to the witness, but I think the trust of  
23 the question was whether the Seatrain Lines, I guess, did  
24 not have contracts covering other ships and operations,  
25 is that it?

1  
2 MR. MARKSON: My recollection, your Honor,  
3 is the question on which the objection was raised was  
4 whether or not all the ships which Seatrain had sold or  
5 traded in to the Maritime Commission, Maritime Admin-  
6 istration, I should say, had come back to it and whether  
7 or not they were actuall all operating as of the moment.

8 THE COURT: Yes, I recall it now. The objection  
9 was that that is beyond the scope of this case and that  
10 is how we got into receiving these additional exhibits.  
11 It does seem to me, as has been pointed out now, that  
12 this case is limited to what actually transpired here and by  
13 whom with respect to these two vessel referred to in the  
14 complaint and not generally what goes on in this industry and  
15 whether there has been proper application here by the  
16 regional director, whether he has probable cause to  
17 believe that there may have been a violation of Section 8E.  
18 We don't want to carry the scope of this hearing beyond  
19 that limited issue as to whether there is probable cause  
20 on the part of the regional director to believe that  
21 there has been a violation of Section 8E. As I see it,  
22 there is this union provision which you say applies to  
23 the transactions which occurred here, is that it?

24 MR. MARKSON: That is right, your Honor.

25 THE COURT: Let us try to stick to that and not



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go into other ships which this company may have had.

At this time we are going to take a 15-minute recess.

(Recess.)

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2 THE COURT: Mr. Markson, before you proceed,  
3 during the recess I took the time to reread the Second  
4 Circuit's decision in the NMU case, and do you want to explain  
5 to me how this case is different from that?

6 MR. MARKSON: If your Honor please, there are  
7 several points of difference, and of course at this time  
8 you haven't got all the evidence, you have only some of the  
9 evidence.

10 Number one, you have an entirely different kind  
11 of collective agreement. You have an agreement that has,  
12 for example, a clause in it that permits the arbitrator  
13 to award damages, something that didn't exist in the  
14 NMU case.

15 Number two, the NMU case comes into court at a  
16 posture where there is an attempt at enforcement of an  
17 arbitrator's award. An arbitrator's award which granted an  
18 arbitrator's injunction, if you please --

19 THE COURT: What he was getting at is the substance  
20 of your claim, which is what you are claimed with here, the  
21 work preservation. Not the procedural difference, but  
22 your substantive claim.

23 MR. MARKSON: It is our view that the decision in  
24 the NMU case does not present factually the same outlook  
25 that we have in the case that we now have here. Here we



1 elrf 3

2 have a complete wholly integrated nationwide deck officers  
3 unit, in effect, with uniform collective agreements between  
4 I think approximately a hundred companies involved in  
5 approximately 300 ships. It is not at all like the situation  
6 that existed in the NMU case.

7 As a matter of fact, there is even the situation  
8 in our case that when a sale of a ship is made within the  
9 unit, so to speak, this enlarged unit that I have been des-  
10 cribing, some of the officers stay with the ship for the  
11 period of time in which they have signed on, and as I recall  
12 the NMU case, the Court made a big point of the fact that  
13 when a ship was sold the crew got off the ship. There is this  
14 continuity element --

15 THE COURT: In this case we don't have any crew  
16 on these ships, isn't that so?

17 MR. MARKSON: No, but our point, your Honor, is  
18 there was activity on the part of Seatrain to narrow the  
19 available jobs for those deck officers who are of the  
20 MMP by sales outside the scope of the MMP unit.

21 And in addition there were a narrowing of  
22 jobs by the retiring of certain vessels. I think there is  
23 testimony from Mr. Hess already that -- what was it, 15,  
24 he said, or 14 vessels were turned into the Maritime  
25 Administration -- 14, and all were then chartered back to

1 elrf 4

2 Seatrain for operation. This was a way of raising funds.  
3 Not all of them were working. I think the objection to  
4 the question rose just at that point as I was asking how  
5 many vessels were working. What has happened is, and  
6 this is what we would like to show, there is this narrowing  
7 of the available job pool, even within the Seatrain empire,  
8 also within the larger unit itself, and that is part of the  
9 general circumstances that surround the making of a work  
10 preservation clause and which has to be gone into to determine  
11 whether or not a particular work preservation clause does  
12 or does not constitute a breach of Section 8-E.

13 It is not only the words of the clause itself,  
14 it also has to do with the totality of the surrounding  
15 circumstances. And I think that one of the other elements  
16 that are involved is this element of the narrowing of the  
17 job market, evidenced by the sale of the ships, the  
18 charter back, and then the retiring from service of a certain  
19 number.

20 THE COURT: As they pointed out a moment ago,  
21 there were no crew members on board the vessels when they  
22 were sold, were they?

23 MR. MARKSON: No, there were none.

24 THE COURT: How could Seatrain have been narrowing?

25 MR. MARKSON: The narrowing is by two elements.



1 elrf 5

2 These are two aspects of the same problem. With respect  
3 to the Brooklyn and the Williamsburgh, these two vessels  
4 were, according to the applications made to the Maritime  
5 Administration, to be operated by a wholly owned  
6 subsidiary. That was the intent of the company.

7 If that had happened, then the jobs of deck officers  
8 would have been filled by members of the Master, Mates  
9 and Pilots, because they were undercovered and it covered  
10 subsidiaries. That was the way the picture looked back  
11 in '69 and again in '72 for the second vessel. Something  
12 happened, I think Mr. Hess testified that there was  
13 a drastic change in the economy and they had to raise  
14 funds.

15 They did two things. They decided first to sell  
16 the Brooklyn and then the Williamsburgh as it was going to  
17 be finished off, and secondly they sold 14 other vessels  
18 to the Maritime Administration and then took back charters  
19 to operate these 14, and then had laid up some of those.  
20 And the narrowing of the job market has to be judged in the  
21 totality of all these elements, and it is this narrowing  
22 of the job market and the protection to be afforded those  
23 who wish to be employed as deck officers that is the  
24 subject matter of the clause in the collective agreement  
25 and which is a legitimate subject matter and which the

1 elrf 6

2 union has a right to go into and help protect the work of  
3 these people.

4 THE COURT: In this NMU case we have a sale by  
5 Commerce, that is the name of the company, to Vantage,  
6 did we not? And the Vantage employees belonged to a  
7 union different from those who were connected with the  
8 Commerce company, isn't that so?

9 MR. MARKSON: I don't remember the names of the  
10 people, but if you put it in terms of Company A and B,  
11 I will agree that is so. NMU had an agreement with one  
12 of the companies and the ship was sold to another company  
13 with an agreement with the Seafarers International  
14 Union, yes.

15 THE COURT: There the NMU sought to compel  
16 Commerce to require Vantage to hire employees or members  
17 of MNU, as opposed to the SIU, isn't that so?

18 MR. MARKSON: It is not that they sought to compel,  
19 they went to arbitration and got an award and they sought  
20 to enforce the arbitrator's award.

21 THE COURT: That is not seeking to compel?

22 MR. MARKSON: It is not compelling in any other  
23 way, other than through the enforcement of an arbitrator's  
24 award.

25 The Court held that with respect



1 elrf 7

2 to that award, which they did get, and the denial of an  
3 injunction, at that time, enjoining the sale of the ship,  
4 what do the courts hold with respect to that?

5 THE COURT: I'm sorry, I don't understand your  
6 question.

7 I am trying to see how this case differs from  
8 the NMU case, that is where we started out. Was that clause  
9 upheld in the NMU case?

10 MR. MARKSON: It is a different clause, your  
11 Honor.

12 THE COURT: How is it different, that is what I am  
13 trying to get out.

14 MR. MARKSON: Number one, the basic difference is  
15 in the clause in this particular case, the arbitrator  
16 has a right to award damages against Seatrain. That is  
17 the only company that is involved, not any third party.  
18 There is no injunction against a sale, there is no mandatory  
19 injunction to compel these third parties to the contract  
20 to convey back to Seatrain.

21 THE COURT: Are you finished with your cross  
22 examination of this witness?

23 MR. MARKSON: No, I have a few more questions  
24 I'd like to ask.

25 THE COURT: All right. Let's see if we can  
complete that in the next few minutes.

1           elrf 8                               Hess-cross

2           BY MR. MARKSON:

3           Q     Mr. Hess, with respect to the applications made  
4           to the Maritime Administration can you tell us whether or  
5           not you received approvals for each of them?

6           A     Yes.

7           Q     Can you tell us from your recollection --

8           A     Excuse me, what do you mean by approval?

9           Q     These are applications for ship mortgage insurance?

10          A     Yes.

11          Q     Did you receive the ship mortgage insurance that  
12          you sought?

13          A     Yes.

14          Q     Did you receive the ship mortgage insurance,  
15          let's take Exhibit 5 first, for Langfitt, on the basis  
16          of the application, Exhibit 5 or was there a modification  
17          or were there conditions?

18          A     If I could see the application, I would know.

19          Q     By all means.

20          A     I know there were modifications.

21          MR. LONDON: Your Honor, I'd like to object to this  
22          line of questioning as well. I know it must have been  
23          apparent, but we framed the issues and the particular  
24          change that Langfitt or ship building's intentions or  
25          purposes has already been brought out. Whether the



1 elrf 9

Hess-cross

2 Martime Association approved it on one date and on a later  
3 date approved it again, is not relevant to the issues before  
4 us.

5 MR. MARKSON: One of the bases, your Honor,  
6 for the application is a statement as to what the union  
7 affiliations are. The company made certain representations  
8 as to union affiliations, said that the affiliations were  
9 on record. The witness has testified that the record  
10 shows that it was the Masters, Mates and Pilots that was  
11 in mind, that it was to be an inhouse company that was to  
12 operate, that was to work under that particular agreement.  
13 The purpose of my question is to elicit from the witness  
14 whether or not there were any conditions in the granting  
15 of approval for the application that had any effect upon  
16 that representation to the Maritime Administration.

17 THE COURT: What has that got to do with what the  
18 Court has to decide, and that is whether there is probable  
19 cause for the regional director to believe this clause may  
20 have been violated, 8-E?

21 MR. MARKSON: Because it is your Honor's job --  
22 this is an odd way to put it, and excuse me for putting  
23 it that way-- but it is the Court's duty in every 10-L  
24 case, at least in this circuit, is to determine whether  
25 or not there is some possibility of success in the board.

1 elrf 10

Hess-cross

2 Whether or not the board may enter an enforceable  
3 order, the Court has a duty to go into the Court, to go  
4 into it at some depth and not in a surface way. And one  
5 of the things that is vitally important is whether or  
6 not in all the circumstances it is proper for the union to  
7 have written a work preservation clause -- written a  
8 clause which had the effect of being a work preservation  
9 clause. This simply is one more finger in the spoke  
10 of developing the facts and circumstances surrounding it.

11 MR. LONDON: Your Honor, if I may be heard,  
12 and you yourself have just really put your finger on it  
13 a moment before, the first thing that I think counsel may or  
14 may not admit is that this clause is very much identical  
15 to the clause that we had in Commerce.

16 So therefore you look at a clause that is  
17 on its face a hot cargo clause.

18 Next, the union may then come up with a defense,  
19 the defense being work preservation. They argue therefore  
20 it is a hot cargo clause, but it is valued for these  
21 particular reasons.

22 The Court, in Commerce, went into a defense at length,  
23 what a work preservation clause is vis a vis a union  
24 signatory clause. The arguments that have been made and  
25 the factual patterns of two cases are nearly identical



1 elrf 11

Hess-cross

2 and to go any further afield than the primary issues  
3 is to run amok and obfuscate the issues that are before  
4 the Court.

5 THE COURT: Yes, it seems to me entirely correct.  
6 Do you want to wind up your cross examination now with this  
7 witness, bearing in mind the narrow issue here as just  
8 stated by the Regional Directors Council. If you have  
9 anything directly on point with respect to that, we will  
10 hear it. If not, the witness is going to come down.

11 MR. MARKSON: I take exception to your Honor's  
12 statement. I think that --

13 THE COURT: We are going far afield. We have  
14 been over this. This is a case almost directly on point,  
15 and I don't know where this line of cross examination is  
16 going to carry us, except as the Regional Council points  
17 out, except to obfuscate the issue.

18 Let's get through with this witness.

19 MR. MARKSON: If your Honor pleases, the  
20 central key is always in these cases as under all  
21 cases under Section 8-B-4 is whether or not we are  
22 primary or secondary activity.

23 THE COURT: Continue your examination of this  
24 witness, if you have another relevant question, that is.

25 MR. MARKSON: I have a question pending. I

1 elrf 12 Hess-cross

2 assume that your Honor has ruled.

3 THE COURT: Yes, I sustained the objection.

4 MR. MARKSON: I take exception to it.

5 THE COURT: You don't have to take exception.

6 Let's move on.

7 Q Mr. Hess, with respect to the Williamsburgh,  
8 is the company called ANNDEP involved at all?

9 A Yes.

10 Q Do you know the relationship between ANNDEP  
11 and Kingway?

12 A I believe it would be the same as East River  
13 and ANNDEP.

14 THE COURT: You mean East River and Kingsway  
15 are the same corporation?

16 THE WITNESS: No, they are different entities.

17 THE COURT: But related?

18 THE WITNESS: Yes.

19 Q Did you go to the Maritime Administration and  
20 disclose the change in your plans from an inhouse operation  
21 to a sale of the two vessels, Brooklyn and Williamsburgh?

22 A Yes.

23 Q Do you know when you did that, first with respect  
24 to the Brooklyn, and then with respect to the Williamsburgh?

25 MR. SEHAM: I am going to object to that, your



1 elrf 13

Hess-cross

2 Honor. I think Mr. -- my adversary should be satisfied  
3 now that the Maritime Administration does in fact know what  
4 the operation is. I let him ask that question. The  
5 date seems to me to be completely irrelevant. The first  
6 question seemed to be completely irrelevant. Whatever  
7 was troubling them about the original application is clear  
8 now that the Maritime Administration has been advised that  
9 there was a change in the manner of the disposition of  
10 of the vessel.

11 THE COURT: Yes, I think so.

12 MR. MARKSON: I have no further questions of  
13 Mr. Hess. But I do want to offer into evidence Respondents'  
14 Exhibit A for identification and also --

15 THE COURT: Any objection?

16 MR. SEHAM: No, your Honor. We may go off the  
17 record for a minute. There is a problem about copies of this,  
18 though. This is a massive document and I don't think even --

19 THE COURT: What is the document again?

20 MR. SEHAM: It's substantially all the closing  
21 or the major part of the closing documents of the sale  
22 transaction.

23 THE COURT: And you say this is an original, you  
24 don't have a copy?

25 MR. MARKSON: No, that is not an original.

1 elrf 14

Hess-cross

2 MR. SEHAM: But I don't know that we have enough  
3 copies, for instance for the Regional Director. I am  
4 asking whether the union would undertake to supply us  
5 copies since it is making it its exhibit.

6 MR. MARKSON: May I withdraw the offer of the  
7 exhibit then and simply with your consent read in the opening  
8 paragraph as to the parties to the agreement.

9 MR. SEHAM: No, I don't think that is proper.

10 MR. MARKSON: Okay. I still offer it.

11 THE COURT: What is the purpose of this offer  
12 again? To show that there was no business relationship  
13 between Seatrain Shipbuilding and any of the other  
14 corporations that the petition says there was a business  
15 relationship; that in the union's attempt to mandate, compel  
16 arbitration of its grievance, it was not in any way interfer-  
17 ing with or causing one company, Seatrain Shipbuilding  
18 to cease doing business with any other.

19 THE COURT: I don't follow that. Did you  
20 understand that?

21 MR. LONDON: I don't understand that. This is the  
22 first time I have seen this document, but I certainly  
23 object to the offer of the document on that basis because  
24 I don't understand it.

25 THE COURT: I don't understand the offer.



1 elrf 15

Hess-cross

2 MR. MARKSON: If your Honor please, Section 8-E  
3 applies to contracts which compel one employer to cease  
4 doing business with another. It is alleged in the petition  
5 that the union by demanding arbitration of its two  
6 grievances violated Section 8-E in that it sought to enforce  
7 a contractual agreement that Seatrain Shipbuilding stop doing  
8 business with whomever it was doing business with respect  
9 to the sale of the Brooklyn and the Williamsburgh. It  
10 is our position that there was no sale; that whatever  
11 happened didn't pertain to Seatrain Shipbuilding and that  
12 the purpose of offering the document is that the underlying  
13 documents themselves show that there was no enterprise  
14 with any business relationship.

15 THE COURT: There was no sale of the vessel  
16 is what you are saying?

17 MR. MARKSON: From Seatrain Shipbuilding.

18 MR. SEHAM: Your Honor, even if that were true,  
19 that is irrelevant, because sure as shooting there was a  
20 sale of something to somebody.

21 GECC and Wilmington have the ship somehow and I  
22 submit to you it was by a sale --

23 THE COURT: You don't deny there was a sale by  
24 somebody to General Electric Credit Corporation.

25 MR. MARKSON: There was a sale of contractual

1 elrf 16

Hess-cross

2 rights from Langfitt and Tyler to General Electric Credit  
3 Corporation, no question about that.

4 MR. LONDON: Your Honor, he also mentioned some-  
5 time in the colloquy before that he doesn't contest that  
6 these transactions were arms'length transactions. Counsel  
7 himself stated that. And the petition says that we compel  
8 against Seatrain pursuant to the terms of its collective  
9 bargaining agreement; failure to man the Brooklyn with licensed  
10 deck officers of MM&P.

11 So I don't see the particular --

12 THE COURT: Yes. I don't think there is any real  
13 dispute here that there was a sale of this vessel by  
14 somebody to General Electric, and the union is seeking to  
15 enforce its agreement as against that purchaser. Therefore  
16 I don't think that document is necessary. It is a  
17 voluminous document about which there can be no dispute,  
18 but there was a sale here by somebody, and it is just to  
19 weight down the record.

20 MR. MARKSON: I have a document that was produced  
21 by Mr. Seham, counsel for Seatrain; a letter of intent,  
22 as he described it to me, dated September 5, 1974 from  
23 General Electric Credit Corporation with respect to the  
24 Williamsburgh.

25 (Respondents' Exhibit B marked for  
identification.)

xx



1 elrf 17

Hess-cross

2 MR. MARKSON: I offer B for identification in  
3 evidence.

4 THE COURT: What is the purpose of that?

5 MR. MARKSON: The same purpose as the offer with  
6 respect to Exhibit 5, except that it deals with the  
7 Williamsburgh instead of the Brooklyn.

8 THE COURT: What does the document show, that there  
9 was a sale to General Electric?

10 MR. MARKSON: Not that there is a sale but  
11 that there is a commitment to transfer the rights of  
12 the Tyler Tanking Company in the building contract of a  
13 vessel to General Electric.

14 MR. SEHAN: Your Honor, what it is is the antecedent  
15 document with respect to the second vessel, of this mass  
16 of documents. It is the first step, if you will, in the  
17 consummation of the sale. I have the same objections  
18 as to relevancy.

19 THE COURT: Yes, sustained. You don't dispute,  
20 Mr. Markson, that the vessel was sold to the purchaser,  
21 do you?

22 MR. MARKSON: No, I don't dispute that whatever  
23 was --

24 THE COURT: And you seek to have the contract  
25 enforced against that purchaser.

1 elrf 18

Hess-cross

2 MR. MARKSON: No, that I dispute.

3 THE COURT: Well, the effect of what you seek means  
4 that.

5 MR. MARKSON: The effect of what we seek is only  
6 with respect to Seatrain Lines. It is purely primary  
7 activity --

8 THE COURT: What do you seek to have Seatrain  
9 Lines do?

10 MR. MARKSON: To arbitrate the grievance with  
11 respect to these two vessels and to be answerable, that  
12 is to have Seatrain Lines be answerable to the union  
13 and its various fringe benefits funds by reason of the  
14 loss of jobs with respect to those vessels. That is the  
15 real substance.

16 THE COURT: All right. Well, we certainly  
17 don't need those documents you are offering, if that  
18 is the issue.

19 MR. MARKSON: One more thing, your Honor.

20 You sustained the objection to the question I  
21 posed to Mr. Hess before, and I'd like to state it as an  
22 offer of proof that we offer to prove that the 14 vessels that  
23 Seatrain sold to the Maritime Administration and which  
24 were later chartered back to Seatrain for operation,  
25 only nine are actually being operated and five have been



1 elrf 19

Hess-cross

2 laid up. I would offer to prove that if you were  
3 permitted to ask the questions of Mr. Hess.

4 THE COURT: Your offer is noted. You have  
5 concluded the cross examination?

6 MR. MARKSON: I have.

7 THE COURT: Any redirect?

8 MR. LONDON: I have no further questions of the  
9 witness.

10 THE COURT: Thank you. You may come down.  
11 Anything else by the petitioner?

12 MR. LONDON: Yes, my last witness, your Honor,  
13 is Mr. Harrison Staton.

14 MR. MARKSON: Your Honor, please, may I ask  
15 Mr. Hess one more question on cross examination  
16 which I failed to ask?

17 THE COURT: All right. Mr. Hess, please  
18 resume the stand.

19 BY MR. MARKSON:

20 THE CLERK: You are still under oath, Mr. Hess.

21 Q Mr. Hess, with respect to the 14 ships that were  
22 turned in and sold to the Maritime Administration, is it  
23 correct that these were sold so that Seatrain could  
24 raise the money to subsidize the building of the Brooklyn  
25 and the Williamsburgh?

1 elrf 20

Hess-cross

2 MR. LONDON: Objection, your Honor.

3 THE COURT: That question was asked the other  
4 day of this witness, wasn't it, Friday?

5 MR. MARKSON: I don't recall.

6 THE COURT: In any event, what is the relevance  
7 of that question?

8 MR. MARKSON: The relevance of the question,  
9 your Honor, it is back to the same point that I have been  
10 trying to make all along, that the effect of the sale  
11 of these 14 ships is just another facet of the work  
12 preservation efforts of the MM&P and that the ships were  
13 sold and money raised to go into the building of these  
14 two vessels.

15 If that had not been done, these 14 ships would  
16 in all likelihood, or many of the 14 would still be plying  
17 the waters, there would have been jobs for members of the  
18 unions. The fact that they were sold wiped out the jobs  
19 and the monies used went into other vessels, thereby  
20 narrowing first the possible scope of job applications  
21 and then ultimately wiping out entirely because they  
22 were then sold out of kind.

23 THE COURT: Is there an objection to that question?

24 MR. LONDON: Yes, your Honor.

25 MR. SEHAM: I object both because of its



1 elrf 21

Hess-cross

2 irrelevance, and, second his conclusion is wrong, as a  
3 matter of fact.

4 MR. LONDON: And also along the same lines  
5 as we go sustained as irrelevant before.

6 THE COURT: Yes. Objection sustained. You may  
7 come down, Mr. Hess.

8 MR. MARKSON: May I make an offer of proof,  
9 your Honor?

10 THE COURT: Yes.

11 MR. MARKSON: Without repeating it, the offer  
12 is to prove the facts stated posed in the question.

13 THE COURT: All right. Come down, Mr. Hess.

14 (Witness excused.)

15 H A R R I S O N S L A T O N, called as a  
16 witness, being first duly sworn, testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. LONDON:

20 Q Mr. Slaton, would you describe your position  
21 with Seatrain Shipbuilding?

22 A I am the Director of Industrial Relations for  
23 Seatrain Shipbuilding Corporation.

24 Q How long have you held this position, Mr. Slaton?

25 A Since June of 1974.

1 elrf 22

Slaton-direct

2 Q Before that time were you engaged in the Industrial  
3 Relations Department at Seatrain Shipbuilding?

4 A Yes, I was. I was the Director of Labor Relations  
5 from April 1974 until June of 1974 and prior to that, I  
6 was the Assistant Director of Labor Relations from March,  
7 1972 until April of 1973.

8 Q In your present position as Director of Industrial  
9 Relations would you describe generally your functions?

10 A Basically, I have the Personnel Department,  
11 Training Department and Labor Relations Department.  
12 Primarily in the labor relations area, negotiation of  
13 collective bargaining agreements for our employees, the  
14 administration of contracts, employment, training and  
15 all of the related documents.

16 Q In your present position do you know what the  
17 contract, the labor contracts that are presently in  
18 effect at shipbuilding between the various labor organizations?

19 A Yes, I do.

20 Q Could you describe to the Court what these  
21 contracts are and with whom?

22 A We have a collective bargaining agreement with  
23 United Industrial Workers, which covers approximately  
24 2,200 to 2,500 production and maintenance employees. We  
25 also have a contract with the same union for our clerical



1 elrf 23

Slaton-direct

2 employees, covering about 150 clerical workers. We have  
3 a contract with MEBA which covers our designers,  
4 draftsmen, planners.

5 We also have a contract with an affiliate of MEBA,  
6 SSU, Shoreside Supervisors Union, which covers approxi-  
7 mately 250 supervisory personnel.

8 Q Is that contract that you mean he had with MEBA,  
9 a particular division or local?

10 A It is District 2.

11 Q What unit does that cover, what group of employees?

12 MR. MARKSON: Your Honor, I object. We seem to  
13 be going far afield, we seem to be talking about an  
14 entirely different matter than that within the confines of  
15 the petition.

16 THE COURT: What do you say, Mr. London?

17 MR. LONDON: Your Honor, it is relevant.

18 My whole direct examination will be no more than two or three  
19 minutes. I want to show what their labor relations contracts  
20 are and to show that they don't have any contracts with  
21 the union in contention, that is MM&P and so that man in  
22 this position could highlight those areas.

23 THE COURT: What unions that they do have contracts?  
24 Why can't you ask him if they have a contract with Masters,  
25 Mates & Pilots. Is that what you want to ask him?

1 elrf 24

Slaton-direct

2 MR. LONDON: Yes, I will ask him next.

3 MR. MARKSON: Then concede that the MMP has no  
4 collective agreement with the Seatrain Shipbuilding.

5 THE COURT: All right. Then the witness can come  
6 down.

7 Q Let me ask you this, Mr. Slaton, does Shipbuilding  
8 employ any licensed deck officers at all?

9 A No.

10 Q Any oceangoing licensed deck officers?

11 A No.

12 MR. LONDON: No further questions.

13 THE COURT: Thank you. You may come down.

14 MR. MARKSON: Excuse me, I have a question, if  
15 your Honor please.

16 THE COURT: All right.

17 CROSS EXAMINATION

18 BY MR. MARKSON:

19 Q Mr. Slaton, will you tell us what business Seatrain  
20 Shipbuilding is engaged in?

21 A Building ships.

22 MR. MARKSON: Thank you. No further questions.

23 THE COURT: Thank you.

24 Anything further from the petitioner?

25 MR. LONDON: No, your Honor.



1 elrf 25

Slaton-direct

2 THE COURT: Anything further from the respondent?

3 MR. MARKSON: Has the petitioner rested?

4 THE COURT: He said he had nothing further, is  
5 that it?

6 MR. LONDON: Yes, your Honor.

7 THE COURT: The petitioner rests on this  
8 application anyway.

9 MR. MARKSON: I would at this point move to dis-  
10 miss the petition on the ground that the petitioner has  
11 failed to make out a case, a prima facie case.

12 THE COURT: Do you want to assign any grounds  
13 or that motion?

14 MR. MARKSON: I am just making the motion, your  
15 Honor, at this point.

16 THE COURT: Anything further, then?

17 MR. MARKSON: Yes, I have testimony, your  
18 Honor. A witness to call.

19 THE COURT: That motion is denied. The Court  
20 is going to require an offer of proof with respect to your  
21 witness.

22 MR. MARKSON: My witness, your Honor, is going  
23 to be Captain Lowen, who is the secretary-treasurer of  
24 the Masters, Mates & Pilots, as well as its offshore  
25 division, and I would offer to prove through this witness

1 elrf 26

Slaton-direct

2 the structure of the MM&P, the composition of its membership,  
3 the fact that at least the offshore division is not a  
4 labor organization within the contemplation of Section  
5 8-E by virtue of the fact that its total membership consists  
6 of supervisors --

7 THE COURT: The offshore division, you say?

8 MR. MARKSON: The offshore division of the  
9 Masters, Mates & Pilots, yes.

10 MR. SEHAM: Your Honor, may I be heard briefly?  
11 If that is the thrust of the respondents' case, I would  
12 like to submit just two observations.

13 Number one is a decision by the Circuit Court  
14 of the District of Columbia, International Organization of  
15 Masters, Mates & Pilots versus NLRB, 486 F. Second 1271,  
16 1973, re-hearing denied in November of 1973, which holds  
17 that the International Organization of Masters, Mates  
18 & Pilots is a labor union within the meaning of the  
19 National Labor Relations Act.

20 Number two, with respect to any contention that  
21 this contract is with the offshore division, an attempt  
22 to carve out a smaller unit than in fact was decided  
23 by the D.C. Circuit within the past 12 months, I submit the  
24 contracts that we have introduced and everybody  
25 stipulated in evidence and which on their face state that



1 elrf 27

2 the contracts are between the signatory companies and  
3 the International Organization of Masters, Mates &  
4 Pilots, no reference at all to any offshore division,  
5 constitute prima facie evidence that the contract is in  
6 fact with the International union, and coupled with the D.C.  
7 Circuit case, are dispositive.

8 I think for the purpose of the Board's application  
9 which is to show reasonable cause to believe that a  
10 complaint should issue and that injunctive relief be given,  
11 the case is really concluded, your Honor.

12 MR. MARKSON: Your Honor, I just gave you a very  
13 broad sketch of this of the things we had hoped to prove  
14 through Captain Lowen. We offer to prove the structure  
15 of the Masters, Mates & Pilots, the fact that it is  
16 divided up into five divisions, that one division is the  
17 offshore division, that the offshore division consists  
18 of nearly 6,000 members, that all of the members  
19 of the offshore division are supervisors under the Act,  
20 they are licensed deck officers and licenced deck officers  
21 only, and indeed that is a qualification for membership  
22 in the offshore division, that the collective bargaining  
23 agreement is designed by, planned by representatives of the  
24 offshore division and the offshore division only, it is  
25 bargained for by members of the offshore division only,

1 elrf 28

2 that it is ratified by a secret referendum ballot by  
3 members of the offshore division and offshore division  
4 only and that it is administered by the offshore division  
5 and offshore division only.

6 That we have to dig behind the technical titling  
7 of a contract itself which says that it is made by the  
8 MM&P and find out who the real parties in interest are.

9 In that connection even the contract itself shows  
10 that it applies only to licensed deck officers, it doesn't  
11 apply to anybody else. And I think that the citing of some  
12 other case in the District of Columbia Circuit where  
13 these issues were not part of the case, is not particularly  
14 relevant at this time.

15 I would offer to prove to your Honor how many  
16 members there are in total in the MM&P, how many there are  
17 in the offshore division, I would offer to prove the by-laws  
18 and the constitution of the organization --

19 THE COURT: Let me ask you this: Is there a separate  
20 contract, you are saying, with the offshore division?

21 MR. MARKSON: What I am saying, your Honor, is that  
22 these contracts that have been marked in evidence,  
23 Petitioner's 1 and 2, are in actuality, in intention,  
24 in coverage, and in application, contracts of the offshore  
25 division.



1 elrf 29

2 MR. SEHAM: But not in words. The contracts  
3 say both in the preamble and in the conclusionary language  
4 that the contracts are with the International Organization.  
5 There is no reference in terms of referring to contracting  
6 parties to any such thing as the offshore division.

7 The demands for arbitration that were made  
8 in this case, which is the gravamen or what gave rise to  
9 this case are signed by officers of the International  
10 Union, no reference to the offshore division. This case  
11 is about a contract with the International Organization  
12 of Masters, Mates & Pilots. That is what it says. And  
13 I put it to you, your Honor, even if we go back to the  
14 good old rules of the parol evidence rule and things of  
15 that sort, that that loan would be enough basis to foreclose  
16 this testimony. And in this kind of situation where  
17 the Board has had and has continuing experience with  
18 this organization and comes before you asking for a  
19 ruling on the basis of reasonable cause, that there  
20 is no basis for further evidence on this kind of proceeding,  
21 in light of the plain language of the contract and the  
22 decisions of the Board and the D.C. Circuit, to go  
23 forward with the testimony.

24 THE COURT: What else would this witness be  
25 testifying to, Mr. Markson?

1       clrf 30

2               MR. MARKSON: He would also be testifying to  
3       the operation of the grievance procedure, the fact that  
4       the grievance procedure is conducted on a multi-employer  
5       basis rather than a single employer basis, the fact that  
6       there is a grievance committee, which is called the  
7       Personnel Board, which -- the Licensed Personnel Board,  
8       which handles grievances of all employers, from all  
9       employers involving all employees, and that it involves  
10      and relates only to members of the offshore division  
11      itself.

12              It seems to me that your Honor under the decision  
13      of the Second Circuit in Danielson against the Joint  
14      Board of the International Ladies Garment Workers Union,  
15      has every right -- more than right, has every duty to inquire  
16      into the fundamental basis of the charges that were  
17      made before the Board.

18              The Court of Appeals went out of its way in that  
19      case to say that the District Court is not a rubber stamp  
20      of the Labor Board. It went out of its way, it says  
21      there was no judicial abdication by the District Court.

22              The District Court must go into the fact and  
23      determine itself whether or not there is reasonable cause  
24      to believe that an unfair labor practice was committed.

25              THE COURT: We have before us the contracts,  
as you indicate, do we not, which cover --



1 elrf 31

2 MR. MARKSON: You have before you the contracts,  
3 and all I am saying is that we should have an opportunity  
4 to present to your Honor the full story as to what these  
5 contracts are. The fact that there is a narrower group  
6 of officers only --

7 THE COURT: Who are not covered by that contract?

8 MR. MARKSON: Who are the only ones covered  
9 by the contract on whose behalf alone the contract is made  
10 and that there are no persons who are employees in the  
11 statute nor, in the NLRA sense of the word employees that  
12 are covered by the contract. The reason for this is,  
13 if I may just go a step beyond it into legal argument,  
14 is that the violation of Section 8-E has to do with the  
15 making of a contract between employers and labor  
16 organizations, and the definition of labor organizations  
17 in the statute S-1 in which employees participate.

18 If as we contend the offshore division contains  
19 no employees, only supervisors, then it is not a labor  
20 organization for the purpose of Section 8-F of the  
21 statute, and I think we should have an opportunity to  
22 present these facts to you.

23 THE COURT: So you are saying there are no  
24 employees here, is that it?

25 MR. MARKSON: That is what we are saying, your

1 elrf 32

2 Honor, yes.

3 MR. LONDON: If I may be heard, as counsel  
4 Mr. Seham has mentioned, that contract would pretty much  
5 speak for itself. That was handled on behalf of the  
6 International Organization of Masters, Mates & Pilots.  
7 The Court has held in cases that he quoted to you before  
8 and numerous other cases mentioned in my memorandum  
9 that where there is a mixed organization, and the  
10 International MM&P certainly has 200 to 225 statutory  
11 employees, the fact that a contract may or may not be, and  
12 I'm not conceding that it would only deal with non-  
13 statutory employees, would not be controlling.

14 In a situation that was handled in 1965 where  
15 the Court and the Board had a look at the constitution  
16 and by-laws of the MM&P to see in fact whether they were  
17 a labor organization --

18 MR. MARKSON: What year was that, sir?

19 MR. LONDON: I think I mentioned 1965.

20 MR. MARKSON: The viable constitutions were all  
21 adopted in 1970.

22 MR. SEHAM: That is before the D.C. Circuit  
23 decision.

24 MR. LONDON: That D.C. Circuit decision was  
25 1973. But getting back to an earlier case, the Court



1 elrf 33

2 went into the constitution and by-laws and stated this  
3 whole thing in 144 NLRB 1172 enforced 351 Fed. Second  
4 771.

5 If I may, your Honor, take a moment, if one were  
6 to sometimes listen to the arguments made by respondent  
7 in the court before the Courts and the Board, they  
8 sometimes posture themselves to be neither fish nor fowl,  
9 but in fact they have often come to look and represent  
10 the fox. But they come before the Court in situations  
11 in which they want the Board's protection as a shield;  
12 they come before the Court where they insist that there  
13 is a contract and they insist that that contract is a  
14 contract bar for representation purposes.

15 They want the protection of the Act, they want  
16 the protection under 8-A2 and 8-A3 of the Act.

17 Now they come before the Board and say we want  
18 your protection but we don't want the sanctions of the Act.  
19 The court is clearing that this is a labor organization  
20 and has been held to be a labor organization.

21 THE COURT: All right. What other witnesses  
22 do you have?

23 MR. MARKSON: That is the only witness I have,  
24 your Honor.

25 THE COURT: I thought you said you have several.

1 elrf 34

2 You have just this one witness to testify as to whether  
3 this is a labor organization or not, is that it?

4 MR. MARKSON: He will testify to the fundamental  
5 facts. I'm not going to ask him the conclusion, your  
6 Honor. I will argue it on conclusions from the facts.

7 THE COURT: And that is that this contract  
8 covers only the offshore division, and no other employees.

9 MR. MARKSON: No other employees. And was designed  
10 that way and that is its whole function.

11 MR. SEHAM: Your Honor, that is not the  
12 issue, whether this contract covers the supervising employees  
13 or not. The Act says in terms of whether or not there  
14 has been a violation of the law. It talks in terms  
15 of whether or not there is a contract or an agreement  
16 between a labor organization and an employer. Let us  
17 assume, without conceding anything, that the group of  
18 employees covered by this particular contract are exclusive-  
19 ly supervisory employees but that the organization  
20 making the contract or signing the contract includes  
21 other employees. It would therefore be a contract  
22 between a labor organization because it is a composite  
23 group, and an employer.

24 And again, I put it to you, your Honor, that  
25 this precise question subsequent to all these amendments



1 elrf 35

2 of the constitution and by-laws have been decided both by  
3 the courts and by the Board, and in terms of the purposes  
4 of this kind of proceeding it strikes me that reasonable  
5 cause is shown in light of those decisions to look at  
6 the face of the contracts themselves which do in fact  
7 provide that the facts are with the International  
8 Organization and say nothing in terms of the division  
9 being the contractor involved.

10 MR. MARKSIN: Our view is that that approach  
11 is grossly simplistic because it overlooks the industrial  
12 facts that go into the making of a contract and which  
13 your Honor has to look at in arriving at a conclusion as to  
14 what this is and what is involved here.

15 THE COURT: I think you have put on the record  
16 your offer of proof with respect to this witness.

17 MR. MARKSON: I have given it to you in broad  
18 outline. If I may, I can give it to you more precisely  
19 with statistical data.

20 THE COURT: I think that the Regional Director  
21 has sustained his burden here, and that is that he has  
22 reasonable grounds to believe that Section 8-E has been  
23 violated and what the Court will do is write up findings  
24 of fact and conclusions of law with respect to that.  
25 Thank you, gentlemen.

1 elrf 36

2 MR. MARKSON: Your Honor, are you doing that  
3 without giving us our chance to put in a case?

4 THE COURT: You have put the offer of proof  
5 on the record.

6 MR. MARKSON: May I put the entire offer of  
7 proof on the record?

8 THE COURT: No, you have outlined it sufficiently.  
9 Thank you, gentlemen.

10 MR. MARKSON: Your Honor, one other questions,  
11 may we have the opportunity to file a brief on this  
12 subject?

13 THE COURT: We are going to write it up as soon  
14 as we can tomorrow. Hopefully get it out in a couple  
15 of days.

16 (Adjourned at 5:10 p.m.)  
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18  
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21  
22  
23  
24  
25



WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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enclosed 1 copy of written  
Joint Appendix is admitted this  
21st day of February, 1975

Andrew S. Adelman 11:00 am  
Attorney for Charging Party

And  
Michael London be signed by Rosanne Singer  
Michael London, Esq.  
Attorney for A LRB